APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-952

GROUP LIFE AND HEALTH INSURANCE COMPANY,
also known as
BLUE SHIELD OF TEXAS, *et al.*,
Petitioners,

v.

ROYAL DRUG COMPANY, INC.,
doing business as
ROYAL PHARMACY OF CASTLE HILLS
and
DISCO PRESCRIPTION PHARMACY, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED JANUARY 3, 1978
CERTIORARI GRANTED FEBRUARY 27, 1978

INDEX TO APPENDIX

EXHIBITS TO APPENDIX

RELEVANT DOCKET ENTRIES

COURT OF APPEALS

FILINGS/PROCEEDINGS

Date	
6/25/76	Flg. Duplicate Notice of Appeal and Clerk's Statement of Docket Entries
7/16/76	Flg. Notice of Election [Under] Rule 30(c) [Deferred Appendix]
7/21/76	Flg. Appellants' Designation
8/2/76	Flg. Amended Notice of Appeal, filed in D.C. 6/23/76
8/2/76	Flg. Record on Appeal
8/4/76	Flg. Exhibits to Brief
9/7/76	Flg. Brief for Appellants
9/8/76	Flg. Appellants' Designation
9/24/76	Flg. Appellee's Designation (Group Life)
9/24/76	Flg. Brief for Appellee Group Life and Health Insurance Company
9/24/76	Flg. Brief for Appellee Rieger, *et al.*
10/4/76	Flg. Motion for Leave to File Reply Brief in Excess Pages (Granted, 10/12/76)
10/6/76	Flg. Appellants' Supplemental Designation
10/12/76	Flg. Reply Brief for Appellants
10/26/76	Flg. Motion for Extension of Time to File Appendix
10/27/76	Flg. Exhibits
10/27/76	Flg. Motion for Leave to File Supplemental Record (Granted, 10/27/76)
11/4/76	Flg. Appendix
1/10/77	Flg. Motion of Appellees, Sommers Drug Stores Company, *et al.*, to designate counsel for oral argument

DISTRICT COURT

FILINGS/PROCEEDINGS

Date		
5/29/75	1.	Original Complaint, filed. [J]ury demand
5/30/75		Summonses issued. (4)
6/4/75	2.	Summons (Sommers Drug Stores) re/ex 6-2-75.
6/16/75	3.	Summons (Gibson Pharmacy by serving Sec. of State of Texas) re/ex 6-3-75.
6/20/75	4.	Original Ans. of Deft., Rieger/Medi-Save Pharmacies, Inc., filed.
6/23/75	5.	Marshal's Return on Complaint and Summons re/ex 6/10/75.
6/23/75	6.	Deft. Answer [The Sommers Drug Store Company] and Jury Demand, filed.
6/26/75	7.	Marshal's Return on Complaint & Summons re/ex 6/10/75
6/27/75	8.	Answer of Deft. Group Life & Health Ins. Co., filed.
6/27/75	9.	Request for Production of Documents by Deft. Group Life & Health Insurance Co. (First set), Joel H. Pullen, Attorney for Pltfs., filed.
6/27/75	10.	Answer of Def. Walgreen Texas Co. and Jury Demand, filed.
7/30/75	11.	Agreed Motion for Ext. of Time to Resp. to Deft's Request for Prod. of Doc., filed.
8/7/75	12.	Order Granting Agreed Motion for Ext. of Time To Resp. to Deft's Request for Prod. of Doc., filed.
8/8/75	13.	Order Preliminary to Pre-Trial Conference, filed.
8/11/75	14.	Pltfs' Objections and Ans. to Request for Prod. of Doc., filed.
8/13/75	15.	Pltfs' Motion to Bifurcate Discovery & for Protective Order, filed.

Date		
8/20/75	16.	Opposition of Deft. Group Life & Health Ins. Co. to Pltfs' Motion to Bifurcate Discovery & in the Alternative for Protective Order Pursuant to Rule 26, Fed. Rules of Civil Proc., filed.
8/20/75	17.	Memo Brief of Deft. Group Life & Health Ins. Co. in Opposition to Pltfs' Motion to Bifurcate Discovery & in the Alternative for Protective Order, filed.
8/25/75	18.	Deft., Rieger-Medi-Save, Inc.'s, Response in Opposition to Pltfs' Motion to Bifurcate Discovery & for Alternative Relief, filed.
8/25/75	19.	Brief in Support of Deft., Rieger-Medi-Save, Inc.'s Response in Opposition to Pltfs' Motion to Bifurcate Discovery & for Alternative Relief, filed.
8/25/75	20.	Opposition of Deft., Walgreen Texas Co., to Motion of Pltfs' Motion to Bifurcate Disc. & in the Alternative, for Protective Order, filed.
8/26/75	21.	Response of Deft., the Sommers Drug Stores Co., to Pltfs' Motion to Bifurcate Discovery and in the Alternative for Protective Order, filed.
8/27/75	22.	Brief of Pltfs in Resp. to Defts' Opposition to Pltfs' Motion to Bifurcate Discovery, filed.
8/29/75	23.	Reply of Deft. Group Life & Health Ins. Co. to Brief of Pltfs. in Response to Defts' Opposition to Pltfs' Motion to Bifurcate Discovery, filed.
9/10/75	24.	Notice Duces Tecum to Take Deposition Upon Oral Examination, filed.
9/29/75	25.	Order Denying Pltfs' Motion to Bifurcate Discovery & in the Alternative for Protective Order, filed.
9/29/75	26.	Order Requiring Stipulation of Positions on Disputed Discovery, filed.
11/14/75	27.	Notice of Intent to Take Deposition.
12/3/75	28.	Stipulation of Dismissals. Filed.

Date		
12/12/75	29.	Notice Duces Tecum to take Deposition Upon Oral Examination. Filed. (Mr. A. W. Pogue)
12/12/75	30.	Notice Duces Tecum to take Deposition Upon Oral Examination of Mr. R. C. McAnelly. Filed.
12/12/75	31.	Notice Duces Tecum to take Deposition Upon Oral Examination of Mr. Donald H. Bunnell. Filed.
12/12/75	32.	Notice Duces Tecum to take Deposition Upon Oral Examination of Mr. Paul D. Connor. Filed.
12/15/75	33.	Ordered that the Stipulation of Dismissals is approved and cause is dismissed with prejudice as to Alamo Heights Pharmacy, Inc., Patts Drug, Inc., d/b/a Patt's Drug Store No. 1, Thomas J. Parma d/b/a Parma's Pharmacy, Baylor Parsons d/b/a Parson's Pharmacy, James Pollock d/b/a Pollock's Pharmacy, Physicians & Surgeons Pharmacy, Inc., and Charles Griffin d/b/a Dellview Drug Store.
12/15/75		DOCKET CALL: Pre-Trial Order due April, 1976. Case will be called for announcements and possible setting on March-April Docket.
12/23/75	34.	Amended Notice to take Deposition Upon Oral Examination of Paul D. Connor. Filed.
12/23/75	35.	Amended Notice to take Deposition upon Oral Examination of R. C. McAnelly. Filed.
12/23/75	36.	Amended Notice Duces Tecum to take Deposition Upon Oral Examination of A. W. Pogue. Filed.
12/23/75	37.	Amended Notice Duces Tecum to take Deposition Upon Oral Examination of Donald H. Bunnell. Filed.
12/23/75	38.	Motion to Compel Discovery Filed.
1/6/76		Marshals Return on Deposition Subpoena Received (Re/ex 12/29/75) (A. W. "Woody" Pogue).
1/6/76		Marshals Return on Deposition Subpoena Received (Re/ex 12/29/75) (R. C. McAnelly).

Date		
1/6/76		Marshals Return on Deposition Subpoena Received (Re/ex 12/30/75) (Donald H. Bunnell).
1/6/76		Marshals Return on Deposition Subpoena Received (Re/ex 12/29/75) (Paul D. Connor).
1/6/75	39.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Dellmar Pharmacies, Inc. d/b/a Dellmar Pharmacy #4. Filed.
1/6/76	40.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Dellmar Pharmacies, Inc. d/b/a Dellmar Pharmacy #4. Filed.
1/6/76	41.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Blauser's Pharmacy, Inc. Filed.
1/6/76	42.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Parker's Pharmacy, Inc. Filed.
1/6/76	43.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Highland Hills Pharmacy, Inc. Filed.
1/6/76	44.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Craig Bell d/b/a Bell Pharmacy. Filed.
1/6/76	45.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Royal Drug Co., Inc. d/b/a Pharmacy of Castle Hills and Disco Prescription Pharmacy. Filed.
1/6/76	46.	Notice Duces Tecum to Take Deposition Upon Oral Exam of White Cross Professional Pharmacy, Inc., d/b/a White Cross #1 and #4. Filed.
1/6/76	47.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Blanco Pharmacy, Inc. Filed.
1/6/76	48.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Econodose Systems, Inc. d/b/a Medical Center Pharmacy. Filed.
1/6/76	49.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Gustin Hncir d/b/a Turner's Pharmacists. Filed.

Date		
1/6/76	50.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Carlos Diaz d/b/a Valley View Pharmacy. Filed.
1/6/75	51.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Alfred Sangalli d/b/a Star Drug Store. Filed.
1/6/76	52.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Blanco Southside Pharmacy, Inc. Filed.
1/6/76	53.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Rodolfo L. Davila, Inc. d/b/a Davila Pharmacy. Filed.
1/6/76	54.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Rong, Inc. d/b/a Economy Pharmacy. Filed.
1/6/76	55.	Notice Duces Tecum to Take Deposition Upon Oral Exam of Zarzamora Pharmacy, Inc. Filed.
1/12/76	56.	Notice Int. to Take Depo. Pursuant to Rule 30(b) (6), filed.
1/15/76	57.	Notice of Intention to Take Depos. of Rieger/Medi-Save Pharmacies, filed.
1/15/76	58.	Notice of Intention to Take Depos. of Walgreen Texas Co., filed.
		[no item 59]
1/16/76	60.	Deposition of Donald H. Bunnell, filed.
1/19/76	61.	ORDER Approving Stipulation of Dismissals (Dismissing with prejudice Alamo Hgts. Pharmacy, Inc.; Patts Drug, Inc. dba Patt's Drug Store #1; Thomas J. Parma dba Parma's Pharmacy; Baylor Parson's dba Parson's Pharmacy; James Pollock dba Pollock's Pharmacy; Physicians & Surgeons Pharmacy, Inc; Charles Griffin dba Dellview Drug Store).
1/21/76	62.	Joint Motion to Suspend Discovery and to Modify Order Preliminary to Pre-Trial Conference, filed.

Date		
1/23/76	63.	ORDER Approving Joint Motion to Suspend Discovery and to Modify Order Preliminary to Pre-Trial Conference, filed.
1/28/76	64.	Deposition of Paul D. Connor and A. W. Pogue, filed.
2/2/76	65.	Deposition of Robert C. McAnelly, filed.
2/23/76	66.	Motion of Def., Group Life & Health Ins. Co., to Dismiss, filed.
2/23/76	67.	Brief of Def., Group Life and Health Ins. Co. in Support of Motion to Dismiss, filed.
2/23/76	68.	Motion of Def., Walgreen Texas Co., to Dismiss, filed.
2/23/76	69.	Motion of Def., The Sommers Drug Stores Co., to Dismiss, filed.
2/23/76	70.	Brief of Sommers Drug Stores Co., in Support of Motion to Dismiss, filed.
2/25/76	71.	Def., Rieger/Medi-Save Pharmacies, Inc.'s Motion to Dismiss, filed.
2/25/76	72.	Memorandum Brief in Support of Def., Rieger/Medi-Save Pharmacies, Inc.'s Motion to Dismiss, filed.
3/10/76	73.	Motion to Extend Time for Filing Defs' Response and Brief to Defs' Motion to Dismiss, filed.
3/11/76	74.	Stipulation of Plfs. & Def., Rieger/Medi-Save Pharmacies, Inc., filed.
3/11/76	75.	Stipulation of Plfs. and Def., Sommers Drug Stores Co., filed.
3/12/76	76.	Stipulation of Plfs. and Def., Walgreen Texas Co., filed.
3/15/76		DOCKET CALL: Hearing on Motion to Dismiss requested by Mr. Pullen and set for April 19, 1976 at 2:30 P.M. All briefs are to be filed in advance. Set on June, 1976 Docket. Settlement not possible at this time.

Date		
3/19/76	77.	ORDER Allowing 10 days to Respond after filing of the last of the depositions of Steve G. McDonald, Judith S. Johnson and Lee Helis, filed.
3/24/76	78.	Depositions of Judith S. Johnson, Lee Helis and Steve G. McDonald, filed.
4/5/76	79.	Plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss, filed.
4/15/76	80.	Defendant's Rieger/Medi-Save Pharmacies, Inc., Reply Brief in Support of its Motion to Dismiss, filed.
4/15/78	81.	Reply of Defendant Group Life and Health Ins. Co. to Plaintiffs' Brief in Opposition to Motion to Dismiss, filed.
4/9/76	82.	Affidavit in Support of Defendant Rieger/Medi-Save Pharmacies, Inc.'s Motion to Dismiss, filed.
4/19/76	83.	Reply of Def., The Sommers Drug Stores Co. to Plaintiffs' Brief in Opposition to Motion to Dismiss, filed.
4/19/76	84.	HEARING ON MOTION TO DISMISS: Movant, Group Life Ins., et al, announced ready. Respondent announced ready. Mr. Kaiser asked Court to treat this motion as a Motion for Summary Judgment. Respondent argued against in that in this instance with reference to drugs, Blue Cross & Blue Shield are not in insurance business. Both sides agreed to an Interlocutory Appeal, whether the Court decides for plaintiff or defendant. Mr. Kaiser cited cases he wishes the Court to consider. Mr. Pullen cited the State Board of Insurance does not feel it has the right to regulate pharmacies. Any additional authorities are to be given to the Court by Friday. The Court will take this matter under advisement. Decision on motion will probably be ready in a week.
5/18/76	84.	MEMORANDUM OPINION, filed. (Including Findings of Fact and Conclusions of Law contained therein.)

Date		
5/18/76	85.	ORDER (consistent with the Memo. Opinion and Findings of Fact and Conclusions of Law) rendering judgment for and in behalf of Defts. Group Life and Health Ins. Co., aka/Blue Shield of Texas, Walgreen Texas Co., The Sommers Drug Stores Co. and Rieger/Medi-Save Pharmacies, Inc. with respect to Plaintiffs' Claims under the federal antitrust laws, filed.
6/16/76	86.	Notice of Appeal, filed. Cy. to Court of Appeals for Fifth Circuit.
6/16/76	87.	Bond for Costs on Appeal Secured by Cash Deposit, filed.
6/23/76	88.	Amended Notice of Appeal, filed.
6/23/76	89.	Amended Bond for Costs on Appeal Secured by Cash Deposit, filed.
6/24/76	90.	Designation of Contents of Record on Appeal, filed.
7/2/76	91.	Designation of Deft. Group Life & Health Ins. Co. of Transcript and Additional Parts to be included in the Record on Appeal, filed.
7/9/76	92.	Appellants' Supplemental Designation of Contents of Record on Appeal, filed. Cy. to Court of Appeals.
7/16/76	93.	Transcript of Hearing on Motions to Dismiss of April 19, 1976, filed.
7/26/76		ORIGINAL RECORD ON APPEAL MAILED THIS DATE to Court of Appeals for the Fifth Circuit.
1/7/78	94.	Copy from the Fifth Circuit of Appellees' Motion for Stay of Mandate, filed.
1/7/78	95.	Order from the Fifth Circuit GRANTING Appellees' Motion for Stay of the Issuance of the Mandate pending Petition for Writ of Certiorari, filed.

COMPLAINT, MAY 29, 1975

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Civil Action No. SA 75 CA 131

ROYAL DRUG COMPANY, INC. d/b/a ROYAL PHARMACY OF CASTLE HILLS and DISCO PRESCRIPTION PHARMACY, BLAUSER'S PHARMACY, INC., PARKERS PHARMACY, INC., CHARLES GRIFFIN d/b/a DELLVIEW DRUG STORE, JAMES POLLOCK, d/b/a POLLOCK'S PHARMACY, THOMAS J. PARMA, d/b/a PARMA'S PHARMACY, CRAIG BELL, d/b/a BELL PHARMACY, GEORGE STONE, d/b/a OLMOS PHARMACY, ALAMO HEIGHTS PHARMACY, INC., PATTS DRUG, INC. d/b/a PATT'S DRUG STORE NO. 1, BAYLOR PARSONS d/b/a PARSONS PHARMACY, HIGHLAND HILLS PHARMACY, INC., ECONODOSE SYSTEMS, INC. d/b/a MEDICAL CENTER PHARMACY, GUSTAVE HNCIR, d/b/a TURNERS PHARMACISTS, PHYSICIAN & SURGEONS PHARMACY, INC., CARLOS DIAZ d/b/a VALLEY VIEW PHARMACY, ALFRED SANGALLI, d/b/a STAR DRUG STORE, BLANCO PHARMACY, INC., BLANCO SOUTHSIDE PHARMACY, INC., DAN PARADA d/b/a DAN'S PHARMACY, RODOLFO L. DAVILA, INC. d/b/a DAVILA PHARMACY, DELLMAR PHARMACIES, INC. d/b/a DELLMAR PHARMACY #4, RONG, INC. d/b/a ECONOMY PHARMACY #1, ZARZAMORA PHARMACY, INC. and WHITE CROSS PROFESSIONAL PHARMACY, INC. d/b/a WHITE CROSS #1 and d/b/a WHITE CROSS #4

v.

GROUP LIFE AND HEALTH INSURANCE COMPANY a/k/a BLUE SHIELD and/or BLUE CROSS-BLUE SHIELD OF TEXAS, WALGREEN TEXAS COMPANY, SOMMERS DRUG STORE, RIEGER-MEDI-SAVE, INC. d/b/a GIBSONS PHARMACY

ORIGINAL COMPLAINT

TO SAID HONORABLE COURT:

Plaintiffs bring this action against defendants for the amount of damages suffered and to be suffered by them due to the defendants' violation of the anti-trust laws of the United States and the State of Texas and allege as follows:

I

This action arises under the Sherman Anti-Trust Act of July 2, 1890, 15 U.S.C.A. Sects. 1-7, and under the Clayton Anti-Trust Act of October 15, 1914, 15 U.S.C.A. section 12 et seq.

II

1. The plaintiff, ROYAL DRUG COMPANY, INC., d/b/a Royal Pharmacy of Castle Hills and Disco Prescription Pharmacy, is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

2. The plaintiff, BLAUSER'S PHARMACY, INC., is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

3. The plaintiff, PARKERS PHARMACY, INC., is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

4. The plaintiff, CHARLES GRIFFIN d/b/a Dellview Drug Store, is a resident of San Antonio, Bexar County, Texas.

5. The plaintiff, JAMES POLLOCK d/b/a Pollock's Pharmacy, is a resident of San Antonio, Bexar County, Texas.

6. The plaintiff, THOMAS J. PARMA d/b/a Parma's Pharmacy, is a resident of San Antonio, Bexar County, Texas.

7. The plaintiff, CRAIG BELL d/b/a Bell Pharmacy, is a resident of San Antonio, Bexar County, Texas.

8. The plaintiff, GEORGE STONE d/b/a Olmos Pharmacy, is a resident of San Antonio, Bexar County, Texas.

9. The plaintiff, ALAMO HEIGHTS PHARMACY, INC., is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

10. The plaintiff, PATTS DRUG, INC. d/b/a Patt's Drug Store No. 1, is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

11. The plaintiff, BAYLOR PARSONS d/b/a Parsons Pharmacy, is a resident of San Antonio, Bexar County, Texas.

12. The plaintiff, HIGHLAND HILLS PHARMACY, INC., is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

13. The plaintiff, ECONODOSE SYSTEMS, INC. d/b/a Medical Center Pharmacy, is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

14. The plaintiff, GUSTAVE HNCIR d/b/a Turners Pharmacists, is a resident of San Antonio, Bexar County, Texas.

15. The plaintiff, PHYSICIAN & SURGEONS PHARMACY, INC., is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

16. The plaintiff, CARLOS DIAZ d/b/a Valley View Pharmacy, is a resident of San Antonio, Bexar County, Texas.

17. The plaintiff, ALFRED SANGALLI d/b/a Star Drug Store is a resident of San Antonio, Bexar County, Texas.

18. The plaintiff, BLANCO PHARMACY, INC., is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

19. The plaintiff, BLANCO SOUTHSIDE PHARMACY, INC., is a corporation, organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

20. The plaintiff, DAN PARADA d/b/a Dan's Pharmacy, is a resident of San Antonio, Bexar County, Texas.

21. The plaintiff, RODOLFO L. DAVILA, INC. d/b/a Davila Pharmacy, is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

22. The plaintiff, DELLMAR PHARMACIES, INC. d/b/a Dellmar Pharmacy #4, is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio Bexar County, Texas.

23. The plaintiff, RONG, INC. d/b/a Economy Pharmacy #1, is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

24. The plaintiff, ZARZARMORA PHARMACY, INC., is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

25. The plaintiff, WHITE CROSS PROFESSIONAL PHARMACY, INC. d/b/a White Cross #1 and White Cross #4, is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

All of Plaintiffs own and operate one or more pharmacies in San Antonio, Bexar County, Texas, and are in the business of compounding and dispensing prescription drugs for public sale.

III

1. Defendant GROUP LIFE AND HEALTH INSURANCE COMPANY, a/k/a BLUE SHIELD and/or BLUE CROSS-BLUE SHIELD OF TEXAS, may be served by serving the Insurance Commissioner of the State of Texas in Austin, Texas. Such defendant is hereinafter referred to as "BLUE CROSS-BLUE SHIELD."

2. Defendant WALGREEN TEXAS COMPANY a/k/a WALGREEN DRUG STORES, may be served by serving its Agent for Service, Mary Wilson, 8110 Kempwood, Houston, Texas. Such defendant is hereinafter referred to as "WALGREEN."

3. Defendant SOMMERS DRUG STORES CO., a/k/a SOMMERS REXALL DRUG STORES, CO., may be served by serving its Agent for Service, Walter M. Corrigan, 3130 E. Houston Street, San Antonio, Texas. Such defendant is hereinafter referred to as "SOMMERS."

4. Defendant RIEGER-MEDI-SAVE, INC., d/b/a GIBSONS PHARMACY, may be served by serving the Secretary of State of the State of Texas. Such defendant is hereinafter referred to as "GIBSONS."

IV

1. The defendant, WALGREEN TEXAS CO., is a corporation organized and existing under the laws of the State of Texas, and operates numerous drug stores engaged in the business of compounding and dispensing prescription drugs for public sale under the name of WALGREEN DRUG STORES and in various GLOBE DISCOUNT STORES.

2. The defendant, REIGER-MEDI-SAVE, INC., is a corporation organized and existing under the laws of the State of Texas, which operates numerous drug stores engaged in the business of compounding and dispensing prescription drugs for public sale in GIBSON DISCOUNT STORES.

3. The defendant, SOMMERS DRUG STORES CO., is a corporation organized and existing under the laws of the State of Texas, which operates numerous drug stores engaged in the business of compounding and dispensing prescription drugs for public sale under its own name.

V

1. All of said defendants, other than BLUE CROSS-BLUE SHIELD, are in competition with plaintiffs in connection with the compounding and dispensing of prescription drugs for public sale in San Antonio and Bexar County, Texas.

2. Defendant GROUP LIFE AND HEALTH INSURANCE COMPANY a/k/a Blue Shield and/or Blue Cross-

Blue Shield of Texas, is one of the largest, if not the largest, company engaged in the business of selling insurance coverage providing for payment of part of the cost to its policyholders of drugs and pharmaceutical products, all as more fully set out below.

VI

COUNT ONE

1. Defendants have and are engaged in an agreement, combination and conspiracy to fix the retail price of drugs and pharmaceuticals. Such agreement, combination and conspiracy has been carried out by their entering into an Agreement between defendants and BLUE CROSS-BLUE SHIELD whereby said parties agree upon and fix prices and charges to be charged to the general public for the compounding and dispensing of prescription drugs. Specifically, defendant BLUE CROSS-BLUE SHIELD and each of the other defendants have entered into a Participating Drug Pharmacy Agreement, hereinafter called "Agreement". Said Agreement specifies the amount to be received by each pharmacy for the sale of drugs and other pharmaceuticals dispensed by Defendants to BLUE CROSS-BLUE SHIELD policyholders who have purchased coverage under the BLUE CROSS-BLUE SHIELD prepaid prescription policies. Under such Agreement Blue Cross-Blue Shield agrees to pay for each drug provided an amount equal to the total of the acquisition cost of such drug as defined therein plus a fixed dispensing fee of $2.00 less the applicable policy deductibles.

2. Basically pharmacies which join in such Agreement are reimbursed by BLUE CROSS-BLUE SHIELD for 100% of the acquisition cost, plus the $2.00 fee which is paid by the customer. Pharmacies which have not signed said Agreement are only reimbursed for 75% of the ac-

quisition cost thereof in addition to the $2.00 fee paid by their customers. Such contract and performance under it result in acquisitive, pernicious and blatant economic coercion to force BLUE CROSS-BLUE SHIELD policy[-] holders to deal only with pharmacies which have entered into such Agreement and become part of the unlawful combination, agreement and conspiracy with BLUE CROSS-BLUE SHIELD. Failure to deal with such pharmacists results in such policyholder and pharmacy customer not receiving full reimbursement for the cost of the particular drugs and prescriptions covered by their BLUE CROSS-BLUE SHIELD policy. Defendants and all other pharmacies which have executed such Agreement have entered into a combination[,] conspiracy and agreement to fix prices for the sale of drugs and pharmaceuticals, which is a per se violation of the Federal Anti-Trust Laws, specifically Section 1 of the Sherman Act, and are engaged in horizontal price fixing with respect to dispensing of drugs and pharmaceuticals.

COUNT TWO

1. The foregoing allegations of this complaint are incorporated in this Count Two.

2. The foregoing activities of defendants constitute a group boycott in violation of the Federal Anti-Trust Laws in that the purpose and necessary effect of said combination, agreement and conspiracy is to cause persons holding prepaid prescription coverage under the applicable BLUE CROSS-BLUE SHIELD policies to not deal with plaintiffs and other pharmacies similarly situated, but to deal only with pharmacies which are members of, have participated and joined in such unlawful agreement, combination and conspiracy in violation of the Sherman Act.

COUNT THREE

1. The allegations of Count One above are hereby incorporated by reference.

2. The effect of the combination, agreement and conspiracy is to allocate territories to pharmacists who have signed the Agreement and impose territorial restrictions, all of which are per se violations of the Sherman Act.

COUNT FOUR

1. The allegations of Count One are incorporated herein by reference.

2. The actions alleged constitute violations of the Federal Anti-Trust Law set out above and the Texas Business and Commerce Code and defendants, and each of them, should be enjoined on final hearing from:

A. From agreeing on and fixing prices which individual pharmacists may charge,

B. From engaging in group boycotts,

C. From continuing to utilize and observe the provisions of the Participating Drug Pharmacy Agreement,

D. From requiring pharmacists to enter into contracts which violate the Federal and State Anti-Trust Laws,

E. From entering into any contracts the effect of which is to maintain or set retail prices between such pharmacies and their customers, or

F. Issuing any contract which distinguishes insofar as reimbursement for the purchase price of drugs and other pharmaceuticals between pharmacies which

are part of the illegal agreement, combination and conspiracy, and those which are not part thereof.

G. From agreeing to allocate territories.

COUNT FIVE

1. The foregoing allegations in Count One of this Complaint are incorporated herein by reference.

2. The court has jurisdiction under the causes of action alleged in this Count under the doctrine of pendent jurisdiction.

3. All of such acts and conduct alleged above violate the Texas Business and Commerce Code, Sections 15.01 et seq., commonly known as the Texas Anti-Trust Laws.

COUNT SIX

Plaintiffs' damages and damages to other pharmacies similarly situated who have likewise been injured by defendants' unlawful acts are substantial and are in all probability in millions of dollars, the exact extent of which cannot be determined until Plaintiffs' discovery from defendants is completed and the full extent of such agreement, combination and conspiracy is determined.

COUNT SEVEN

Plaintiffs are entitled to recover reasonable attorneys' fees from defendants in the amount of not less than $50,000.

WHEREFORE each of plaintiffs pray that they have judgment jointly and severally against defendants for treble their damages, for reasonable attorneys' fees, for costs of suit and for injunctive relief as above alleged,

and for such other and further relief to which Plaintiffs are entitled. No immediate emergency action is sought at this time.

/s/ Joel H. Pullen
JOEL H. PULLEN of
TINSMAN & HOUSER, INC.
1900 NBC Building
San Antonio, Texas 78205

Attorneys for Plaintiff

Now come Plaintiffs and demand a jury.

/s/ Joel H. Pullen
JOEL H. PULLEN

ANSWER OF DEFENDANT RIEGER/MEDI-SAVE PHARMACIES, INC., JUNE 20, 1975

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

ORIGINAL ANSWER OF DEFENDANT, RIEGER/MEDI-SAVE PHARMACIES, INC.

Rieger/Medi-Save Pharmacies, Inc., incorrectly designated as Rieger-Medi-Save, Inc., answers plaintiff's Original Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim against Rieger/Medi-Save Pharmacies, Inc. upon which relief may be granted.

SECOND DEFENSE

This Court lacks jurisdiction over the matters alleged in the Complaint because of the lack of any requisite effect on commerce.

THIRD DEFENSE

The Complaint fails to state a cause of action against this defendant because Group Life and Health Insurance Company, with whom it is alleged to have conspired, combined and agreed, is not a proper party nor capable of such actions under the Anti-Trust Laws of the United States, because of exemption under the McCarran-Ferguson Act (15 USC § 1011, et seq.).

Answer of Defendant Rieger/Medi-Save Pharmacies, Inc.

FOURTH DEFENSE

The Complaint fails to state a proper cause of action against defendant in its pendant allegations, based on the Texas Anti-Trust Laws, because such an action is not properly maintainable in absence of a proper cause of action under federal law.

FIFTH DEFENSE

The Complaint should be dismissed as to this defendant because the service of process upon it was improper and insufficient.

SIXTH DEFENSE

To the extent the allegations of Plaintiffs' Original Complaint are directed to Rieger/Medi-Save Pharmacies, Inc., it answers paragraph by paragraph, as follows:

I

The allegations of Paragraph I are denied, except it is admitted that plaintiffs' do purport to bring this action under the statutes indicated.

II

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph II, sub-paragraphs 1.-25.

III

Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph III, sub-paragraphs 1.-3. The allegations of Paragraph III, sub-paragraph 4. are denied.

IV

It is admitted that the defendant, Rieger/Medi-Save Pharmacies, Inc., operates certain drug stores engaged in the business of compounding and dispensing prescription drugs for public sale in certain Gibson Discount stores. The balance of the allegations of Paragraph IV, sub-paragraph 2. are denied.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph IV, sub-paragraphs 1. and 3.

V

This defendant admits that it is engaged in competition with plaintiffs in the compounding and dispensing of prescription drugs for public sale in certain areas of San Antonio and Bexar County, Texas. This defendant is without information sufficient to form a belief as to the truth of the balance of the allegations of Paragraph V, sub-paragraphs 1. and 2.

VI

COUNT ONE

This defendant admits that it entered into an agreement by and between itself and Group Life and Health Insurance Company, subject to terms provided therein. The balance of the allegations of Paragraph VI, sub-paragraphs 1. and 2. are denied.

COUNT TWO

This defendant adopts, in response to the allegations of COUNT TWO, sub-paragraph 1., its respective answers to Paragraphs I through Paragraph VI, COUNT ONE, sub-paragraph 2.

The allegations of COUNT TWO, sub-paragraph 2., are denied.

COUNT THREE

This defendant adopts, in response to the allegations of COUNT THREE, sub-paragraph 1., its answer to the allegations of COUNT ONE, sub-paragraphs 1. and 2. of the Complaint.

The allegations of COUNT THREE, sub-paragraph 2. are denied.

COUNT FOUR

This defendant adopts, in response to the allegations contained in COUNT FOUR, sub-paragraph 1., its answer to COUNT ONE, sub-paragraphs 1. and 2.

The allegations of COUNT FOUR, sub-paragraph 2., are denied.

COUNT FIVE

This defendant adopts, in response to COUNT FIVE, sub-paragraph 1., its answer to COUNT ONE, sub-paragraphs 1. and 2.

The allegations of COUNT FIVE, sub-paragraphs 2. and 3. are denied.

COUNT SIX

The allegations of COUNT SIX are denied.

COUNT SEVEN

The allegations of COUNT SEVEN are denied.

This defendant denies that plaintiffs are entitled to any of the relief demanded or prayed for, and further denies

that it has violated any of the provisions of any acts upon which this action is based.

OTHER PARTIES

To the extent that the allegations of the Complaint are directed to persons or corporations other than Rieger/Medi-Save Pharmacies, Inc., this defendant is without knowledge or information sufficient to form a belief as to the truth of such allegations.

Except as expressly admitted herein, all the allegations of this Complaint relating to Rieger/Medi-Save Pharmacies, Inc. are denied.

WHEREFORE, Rieger/Medi-Save Pharmacies, Inc. prays that plaintiffs take nothing by their suit, that it recover its costs and for such other and further relief to which it may be justly entitled.

Respectfully submitted,

CHARLES R. SHADDOX

By /s/ C. R. Shaddox
2000 Frost Bank Tower
San Antonio, Texas 78205
Attorneys for Defendant, Rieger/Medi-Save Pharmacies, Inc.

Of Counsel:

GROCE, LOCKE & HEBDON
2000 Frost Bank Tower
San Antonio, Texas 78205

Defendant, RIEGER/MEDI-SAVE PHARMACIES, INC., hereby demands a jury.

/s/ C. R. Shaddox
CHARLES R. SHADDOX

[Certificate of Service Omitted in Printing]

ANSWER OF DEFENDANT THE SOMMERS DRUG STORES COMPANY, JUNE 23, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

ANSWER OF DEFENDANT
THE SOMMERS DRUG STORES COMPANY

THE SOMMERS DRUG STORES COMPANY ("Sommers"), one of the Defendants herein, files this, its Answer to Plaintiffs' Original Complaint, and would show:

First Defense

The Original Complaint fails to state a claim against Sommers upon which relief can be granted.

Second Defense

The Court lacks jurisdiction over the subject matter because:

A. No cause of action has been shown to exist under the acts of Congress regulating commerce or protecting trade and commerce against restraints and monopolies;

B. The lack of any requisite effect on interstate commerce;

C. All of the parties are residents of the State of Texas and no diversity jurisdiction exists; and,

D. In the absence of jurisdiction under federal law there is no pendent jurisdiction.

Third Defense

The Complaint fails to state a claim upon which relief can be granted against Sommers under the antitrust laws

of the United States because the Defendant GROUP LIFE AND HEALTH INSURANCE COMPANY ("Blue Cross") is engaged in the "business of insurance", and all matters alleged by Plaintiffs herein arise out of the "business of insurance", which is regulated by the Insurance Commissioner of the State of Texas and exempt from the provisions of the Sherman and Clayton Acts pursuant to the McCarran-Ferguson Act (15 U.S.C. § 1011, *et seq.*).

Fourth Defense

Sommers answers the allegations of Plaintiffs' Original Complaint in paragraphs numbered to correspond with those of the Original Complaint, as follows:

I.

Sommers denies the allegations contained in Part I of the Complaint.

II.

As to each and every allegation contained in Part II of the Complaint, Sommers denies that it has knowledge or information thereof sufficient to form a belief in connection therewith.

III.

Sommers admits as alleged in Part III, Paragraph No. 3 of the Complaint that its agent for service is Walter N. Corrigan, 3130 E. Houston Street, San Antonio, Texas. As to each and every other allegation contained in said Part III of the Complaint, Sommers denies that it has knowledge or information sufficient to form a belief in connection therewith.

IV.

As to Part IV, Paragraph No. 3 of the Complaint, Sommers admits that it is a corporation duly authorized to do business in Texas and whose principal place of business is Texas, but would show that it is organized under the laws of the State of Maryland, operating numerous drug stores (in Texas only) engaged in the business of compounding and dispensing prescription drugs for public sale under its own name. As to each and every other allegation contained in said Part IV, Sommers does not have knowledge or information sufficient to form a belief in connection therewith.

V.

As to each and every allegation contained in Part V of the Complaint, Sommers denies that it has knowledge or information thereof sufficient to form a belief in connection therewith, except that Sommers admits that it is in competition with other drug stores in San Antonio and Bexar County, Texas.

VI.

COUNT ONE

Sommers admits that it entered into a Participating Drug Pharmacy Agreement on the terms provided therein, solely between itself and Blue Shield. As to each and every other allegation contained in Part VI, Count One of the Complaint, Sommers denies the allegations as to itself, and denies that it has any knowledge or information thereof sufficient to form a belief in connection with allegations made as to other Defendants referred to therein.

Answer of Defendant The Sommers Drug Stores Co.

COUNT TWO

As to the allegations contained in Count Two, Paragraph No. 1, Sommers has previously responded to the incorporated "foregoing allegations" of the Complaint, which answers are here repeated.

As to the allegations contained in Count Two, Paragraph No. 2, Sommers denies the allegations.

COUNT THREE

As to the allegations contained in Count Three, Paragraph No. 1, Sommers has previously responded to the incorporated Count One of the Complaint, which answers are here repeated.

As to the allegations contained in Count Three, Paragraph No. 2, Sommers denies the allegations.

COUNT FOUR

As to the allegations contained in Count Four, Paragraph No. 1, Sommers has previously responded to the incorporated Count One of the Complaint which answers are here repeated.

As to each and every allegation contained in Count Four, Paragraph No. 2 of the complaint, Sommers denies the allegations.

COUNT FIVE

As to the allegations contained in Count Five, Paragraph No. 1, Sommers has previously responded to the incorporated Count One of the Complaint which answers are here repeated.

Answer of Defendant The Sommers Drug Stores Co.

As to each and every allegation contained in Count Five, Paragraphs 2 and 3 of the Complaint, Sommers denies the allegations.

COUNT SIX

As to Count Six, Sommers denies the allegations.

COUNT SEVEN

As to Count Seven, Sommers denies the allegations.

WHEREFORE, Defendant, THE SOMMERS DRUG STORES COMPANY, prays judgment that the Plaintiffs take nothing by reason of their Complaint on file herein but that the same be dismissed without cost to Defendant, and that Defendant recover its costs and further relief to which it may be justly entitled.

Respectfully submitted,

GRESHAM, DAVIS, GREGORY,
WORTHY & MOORE
1800 Frost Bank Tower
San Antonio, Texas 78205

By /s/ Richard B. Moore

Attorneys for Defendant,
The Sommers Drug Stores
Company

Answer of Defendant The Sommers Drug Stores Co.

DEFENDANT SOMMERS' DEMAND FOR JURY

COMES NOW the Defendant, THE SOMMERS DRUG STORES COMPANY, and as is provided by Rule 38 of the Federal Rules of Civil Procedure in United States District Courts (28 U.S.C.A.), requests trial by jury in the above numbered and styled cause.

Dated June 23, 1975.

GRESHAM, DAVIS, GREGORY,
WORTHY & MOORE
1800 Frost Bank Tower
San Antonio, Texas 78205

Attorneys for Defendant,
The Sommers Drug Stores
Company

By /s/ Richard B. Moore
RICHARD B. MOORE

[Certificate of Service Omitted in Printing]

ANSWER OF DEFENDANT GROUP LIFE AND HEALTH INSURANCE COMPANY, JUNE 22, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

ANSWER OF DEFENDANT GROUP LIFE AND HEALTH INSURANCE COMPANY

GROUP LIFE AND HEALTH INSURANCE COMPANY, also known as Blue Shield of Texas ("Blue Shield") (incorrectly designated as Blue Shield and/or Blue Cross-Blue Shield of Texas), one of the Defendants herein, answers Plaintiffs' Original Complaint in this action as follows:

FIRST DEFENSE

The Original Complaint should be dismissed pursuant to Rules 12(b)(6) and 56, Federal Rules of Civil Procedure, because it fails to state a claim against Blue Shield for which relief can be granted.

SECOND DEFENSE

The Original Complaint should be dismissed pursuant to Rules 12(b)(1) and 56, Federal Rules of Civil Procedure, because the matters alleged therein do not have the requisite effect on interstate commerce. Therefore, the Court lacks subject matter jurisdiction of this action.

THIRD DEFENSE

The Original Complaint should be dismissed pursuant to Rules 12(b)(1), 12(b)(6) and 56, Federal Rules of Civil Procedure, because there is no diversity of citizenship

under 28 U.S.C. § 1332. Jurisdiction, if any, is under the antitrust laws of the United States. As shown in Blue Shield's Second Defense above, no federal question arises under the antitrust laws. Therefore, Plaintiffs have failed to state a proper cause of action and the Court does not have subject matter jurisdiction by reason of diversity of citizenship.

FOURTH DEFENSE

The Original Complaint should be dismissed pursuant to Rules 12(b)(1), 12(b)(6) and 56, Federal Rules of Civil Procedure, because in the absence of any cause of action based upon federal law, as shown in Blue Shield's Second Defense and Third Defense, above, this Court may not entertain Plaintiffs' pendent claims based upon alleged violations of the Texas antitrust laws.

FIFTH DEFENSE

The Original Complaint should be dismissed pursuant to Rules 12(b)(6) and 56, Federal Rules of Civil Procedure, because the same fails to state a cause of action against Blue Shield. Blue Shield is engaged in the "business of insurance", and all matters alleged by Plaintiffs herein arise out of the "business of insurance", which "business" is regulated by state law. Therefore, Blue Shield is exempted from application of the Sherman and Clayton Acts by the provisions of the McCarran-Ferguson Act (15 U.S.C. § 1011, *et seq.*).

SIXTH DEFENSE

The claims set forth in the Original Complaint are barred in whole or in part by laches.

SEVENTH DEFENSE

Blue Shield answers the allegations of the Original Complaint in paragraphs numbered to correspond with those of the Original Complaint, as follows:

I.

Denied; however, Blue Shield admits that proper causes of action may arise under the statutes alleged.

II.

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25. Blue Shield is without knowledge or information sufficient to form a belief as to the truth of the allegations.

Blue Shield is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the last (unnumbered) paragraph of paragraph II of the Original Complaint.

III.

1. Blue Shield denies the first sentence. The second sentence requires no admission or denial; however, this Defendant states that it has been incorrectly designated as "Blue Shield and/or Blue Cross-Blue Shield of Texas".

2. Blue Shield is without knowledge or information sufficient to form a belief as to the truth of the first sentence. The second sentence requires no admission or denial.

3. Blue Shield is without knowledge or information sufficient to form a belief as to the truth of the first sentence. The second sentence requires no admission or denial.

4. Blue Shield is without knowledge or information sufficient to form a belief as to the truth of the first sentence. The second sentence requires no admission or denial.

IV.

1, 2 and 3. Blue Shield is without knowledge or information sufficient to form a belief as to the truth of the allegations.

V.

1. Blue Shield is without knowledge or information sufficient to form a belief as to the truth of the allegations.

2. Blue Shield admits that it is one of the largest companies engaged in the business of selling insurance coverage in the State of Texas providing for payment of part of the cost to its policyholders of prescription drugs; however, denies the remainder of this paragraph.

VI.

COUNT ONE

1. Blue Shield denies the first, second, fourth and fifth sentences. Blue Shield admits the third sentence and says that the Agreement is a document which speaks for itself.

2. Blue Shield admits the first sentence and denies the second, third, fourth and fifth sentences.

COUNT TWO

1. For each allegation incorporated by reference from the Original Complaint, Blue Shield incorporates its answering paragraph with the same force and effect as if the answer were set forth here in full.

2. Denied.

COUNT THREE

1. For each allegation incorporated by reference from Count One of the Original Complaint, Blue Shield incorporates its answering paragraph with the same force and effect as if the answer were set forth here in full.

2. Denied.

COUNT FOUR

1. For each allegation incorporated by reference from Count One of the Original Complaint, Blue Shield incorporates its answering paragraph with the same force and effect as if the answer were set forth here in full.

2. Denied.

COUNT FIVE

1. For each allegation incorporated by reference from Count One of the Original Complaint, Blue Shield incorporates its answering paragraph with the same force and effect as if the answer were set forth here in full.

2. Denied.

3. Denied.

COUNT SIX

Denied.

COUNT SEVEN

Blue Shield denies the allegations of Count Seven and says that Plaintiffs are not entitled, in law, or in fact, to any recovery or relief from Blue Shield.

WHEREFORE, Blue Shield prays that Plaintiffs take nothing by their suit herein, that it recover its costs and

have such other and further relief to which it may be justly entitled.

Respectfully submitted,

COX, SMITH, SMITH, HALE & GUENTHER INCORPORATED
500 National Bank of Commerce Building
San Antonio, Texas 78205
512/224-4281

/s/ J. Burleson Smith
J. BURLESON SMITH

[Certificate of Service Omitted in Printing]

ANSWER OF DEFENDANT WALGREEN TEXAS CO., JUNE 27, 1975

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

ANSWER OF DEFENDANT WALGREEN TEXAS CO.

WALGREEN TEXAS CO. ("WALGREEN"), one of the Defendants herein, files this, its Original Answer to Plaintiffs' Complaint:

FIRST DEFENSE

Plaintiffs' Original Complaint should be dismissed for the reason that it fails to state a claim for which relief can be granted under the Anti-Trust Laws of the United States in that the matters alleged by Plaintiffs did not occur in or substantially affect interstate commerce.

SECOND DEFENSE

Plaintiffs' Complaint should be dismissed for the reason that, since no federal question arises under the Anti-Trust Laws and there is no diversity of citizenship between Plaintiffs and Defendants, this Court does not have jurisdiction.

THIRD DEFENSE

Plaintiffs' Original Complaint should be dismissed for the reason that it fails to state a cause of action against this Defendant because the Defendant GROUP LIFE AND HEALTH INSURANCE COMPANY, with whom it is alleged to have conspired, is engaged in the "business of insurance" and which "business" is regulated by

the Insurance Commissioner of the State of Texas, and, therefore, under the Anti-Trust Laws of the United States, any of such actions are exempt under the McCarran-Ferguson Act (15 U.S.C., Sec. 1011, et seq.).

FOURTH DEFENSE

Plaintiffs' Complaint should be dismissed because, in the absence of any cause of action based upon federal law, this Court has no pendent jurisdiction to entertain any claim based upon an alleged violation of the Texas Anti-Trust Laws.

FIFTH DEFENSE

WALGREEN answers the allegations of Plaintiffs' Complaint as follows:

I

This Defendant denies the allegations contained in Paragraph I of the Complaint that Plaintiffs have any cause of action against it, but would admit that Plaintiffs purport to bring such action under the Statutes as alleged.

II

This Defendant does not have sufficient information as to the allegations with respect to the Plaintiffs as contained in Paragraph II of the Complaint, therefore, can neither admit nor deny such allegations.

III

This Defendant admits the allegations contained in Paragraph III of the Complaint.

IV

This Defendant admits the allegations contained in Sub-Paragraph 1 of Paragraph IV of the Complaint, and, as to Sub-Paragraphs 2 and 3, this Defendant does not have sufficient information regarding the correct corporate names or incorporation of the other Defendants, therefore, can neither admit nor deny such allegations, but admits such Defendants do operate drug stores engaged in compounding and dispensing of prescription drugs.

V

This Defendant admits the allegations contained in Paragraph V of the Complaint.

VI

COUNT ONE

This Defendant admits it has entered into a Participating Drug Pharmacy Agreement with the Defendant GROUP LIFE AND HEALTH INSURANCE COMPANY as alleged in Paragraph VI, Count One of the Complaint, however, denies that the operation under such Agreement, as set out by its terms and conditions, is any conspiracy or combination to fix retail prices of drugs and pharmaceuticals and further denies that this Defendant has committed any act which is in violation of the Federal Anti-Trust Laws.

COUNT TWO

This Defendant hereby incorporates by reference its answers to Plaintiffs' Complaint, as incorporated in Sub-Paragraph 1 of Count Two of the Complaint.

Answer of Defendant Walgreen Texas Co.

This Defendant denies the allegations contained in Sub-Paragraph 2 of Count Two of Plaintiffs' Complaint.

COUNT THREE

This Defendant hereby incorporates by reference its answers to the allegations of Count One, which are incorporated by reference in Sub-Paragraph 1 of Count Three of the Complaint.

This Defendant denies the allegations contained in Sub-Paragraph 2 of Count Three of the Complaint.

COUNT FOUR

This Defendant hereby incorporates by reference its answers to the allegations of Count One, which are incorporated by reference in Sub-Paragraph 1 of Count Four of the Complaint.

This Defendant denies the allegations contained in Sub-Paragraph 2 of Count Four of the Complaint.

COUNT FIVE

This Defendant hereby incorporates by reference its answers to the allegations of Count One, which are incorporated by reference in Sub-Paragraph 1 of Count Five of the Complaint.

This Defendant denies the allegations contained in Sub-Paragraphs 2 and 3 of Count Five of the Complaint.

COUNT SIX

This Defendant denies the allegations contained under Count Six of the complaint.

Answer of Defendant Walgreen Texas Co.

COUNT SEVEN

This Defendant denies the allegations contained in Count Seven of the Complaint.

Defendant WALGREEN TEXAS CO. prays that Plaintiffs recover nothing of and from this Defendant, and that this suit be dismissed at the cost of Plaintiffs.

Respectfully submitted,

/s/ Wm. C. Church, Jr.
WM. C. CHURCH, JR.
8700 Tesoro Drive, Suite 120
Post Office Box 17409
San Antonio, Texas 78217
(512) 828-8261

Attorney for Defendant
Walgreen Texas Co.

Of Counsel:

KAMPMANN, CHURCH & BURNS
8700 Tesoro Drive, Suite 120
San Antonio, Texas 78217

JOINT MOTION TO SUSPEND DISCOVERY AND TO MODIFY ORDER PRELIMINARY TO PRE-TRIAL CONFERENCE, JANUARY 21, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

JOINT MOTION TO SUSPEND DISCOVERY AND TO MODIFY ORDER PRELIMINARY TO PRE-TRIAL CONFERENCE

Plaintiffs and Defendants, Group Life and Health Insurance Company, also known as Blue Shield of Texas, Walgreen Texas Co., The Sommers Drug Stores Company and Rieger/Medi-Save Pharmacies, Inc., jointly move the Court for an order suspending discovery in this action and modifying the Court's Order Preliminary to Pre-Trial Conference entered herein on August 7, 1975.

In support of this Motion, Plaintiffs and Defendants would show that:

1. Plaintiffs have filed this action against Defendants alleging violations of the Federal antitrust laws and the antitrust laws of the State of Texas.

2. In their respective answers filed herein, Defendants have each asserted numerous defenses to Plaintiffs' allegations, including among others, the defense of the antitrust exemption provided under the McCarran-Ferguson Act (15 U.S.C. § 1011, et seq.), which defenses, if determined to be valid, will be dispositive of this action.

3. Plaintiffs and Defendants have completed substantial discovery through production of documents and depositions.

4. Extensive additional discovery is planned (notices for 20 proposed depositions have been filed) and will be necessary to properly prepare for the trial of this case.

5. Plaintiffs and Defendants, by and through their respective attorneys of record, have agreed that in order to prevent the unnecessary expenditure of money, time and effort of the parties and time and effort of the Court, the validity of the McCarran-Ferguson defenses, as asserted by Defendants, should be presented to the Court for a determination prior to continuing with costly and time consuming discovery procedures.

WHEREFORE, Plaintiffs and Defendants jointly move the Court to enter an Order as follows:

A. Suspending all discovery in this action in order that Defendants may present their McCarran-Ferguson Act defenses to the Court for determination.

B. On or before thirty (30) days after the entry of an Order Suspending Discovery, Defendants shall file appropriate motions to dismiss based upon their defenses asserted under the McCarran-Ferguson Act, together with any appropriate supporting materials and memorandum briefs.

C. On or before twenty (20) days after the motions and briefs of Defendants are filed, Plaintiffs shall file their responses and briefs, together with any necessary supporting materials.

D. On or before ten (10) days after the responses and briefs of Plaintiffs are filed, Defendants shall file any replies that they deem necessary, together with any necessary supplemental supporting materials. All discovery shall be suspended pending a final determination of the validity of the McCarran-Ferguson Act defenses asserted by Defendants.

E. If it is ultimately determined by the Court or by an appellate court that the McCarran-Ferguson Act defenses of Defendants are not valid, the parties shall complete discovery on the merits within ninety (90) days after the date of such final determination.

F. A conference of attorneys will be held on or before thirty (30) days after the completion of discovery.

G. Counsel for the respective parties will submit their proposed agreed pre-trial orders within sixty (60) days after the completion of discovery.

H. In the event counsel are unable to agree on a form of a proposed agreed pre-trial order, then counsel for each party is directed to submit his version of an appropriate pre-trial order within ten (10) days after the expiration of the date set forth in Paragraph G hereof.

Respectfully submitted,

TINSMAN & HOUSER, INC.
1900 National Bank of
Commerce Bldg.
San Antonio, Texas 78205

By: /s/ Joel H. Pullen
JOEL H. PULLEN
Attorneys for Plaintiffs

COX, SMITH, SMITH, HALE
& GUENTHER INCORPORATED
500 National Bank of
Commerce Bldg.
San Antonio, Texas 78205

By: /s/ Keith E. Kaiser
KEITH E. KAISER
Attorneys for Defendant
Group Life and Health
Insurance Company

GROCE, LOCKE & HEBDON
2000 Frost Bank Tower
San Antonio, Texas 78205

By: /s/ Charles R. Shaddox
CHARLES R. SHADDOX
Attorneys for Defendant
Rieger/Medi-Save
Pharmacies, Inc.

KAMPMANN, CHURCH &
BURNS
120 Tesoro Building
8700 Tesoro Drive
San Antonio, Texas 78217

By: /s/ William C. Church, Jr.
WILLIAM C. CHURCH, JR.
Attorneys for Defendant
Walgreen Texas Co.

GRESHAM, DAVIS, GREGORY,
WORTHY & MOORE
1800 Frost Bank Tower
San Antonio, Texas 78205

By: /s/ Richard B. Moore
RICHARD B. MOORE
Attorneys for Defendant
The Sommers Drug Stores
Company

ORDER OF UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS APPROVING JOINT MOTION TO SUSPEND DISCOVERY AND TO MODIFY ORDER PRELIMINARY TO PRE-TRIAL CONFERENCE, JANUARY 23, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Civil Action No. SA-75-CA-131

ROYAL DRUG COMPANY, INC. d/b/a/ ROYAL PHARMACY OF CASTLE HILLS and DISCO PRESCRIPTION PHARMACY, BLAUSER'S PHARMACY, INC., PARKERS PHARMACY, INC., CHARLES GRIFFIN d/b/a DELLVIEW DRUG STORE, JAMES POLLOCK, d/b/a/ POLLOCK'S PHARMACY, THOMAS J. PARMA, d/b/a PARMA'S PHARMACY, CRAIG BELL, d/b/a BELL PHARMACY, GEORGE STONE, d/b/a OLMOS PHARMACY, ALAMO HEIGHTS PHARMACY, INC., PATTS DRUG, INC. d/b/a PATT'S DRUG STORE NO. 1, BAYLOR PARSONS d/b/a PARSONS PHARMACY, HIGHLAND HILLS PHARMACY, INC., ECONODOSE SYSTEMS, INC. d/b/a MEDICAL CENTER PHARMACY, GUSTAVE HNCIR, d/b/a TURNERS PHARMACISTS, PHYSICIAN & SURGEONS PHARMACY, INC., CARLOS DIAZ d/b/a VALLEY VIEW PHARMACY, ALFRED SANGALLI, d/b/a STAR DRUG STORE, BLANCO PHARMACY, INC., BLANCO SOUTHSIDE PHARMACY, INC., DAN PARADA d/b/a DAN'S PHARMACY, RODOLFO L. DAVILA, INC. d/b/a DAVILA PHARMACY, DELLMAR PHARMACIES INC. d/b/a DELLMAR PHARMACY #4, RONG, INC. d/b/a ECONOMY PHARMACY #1, ZARZAMORA PHARMACY, INC. and WHITE CROSS PROFESSIONAL PHARMACY, INC. d/b/a WHITE CROSS #1 and d/b/a WHITE CROSS #4

v.

GROUP LIFE AND HEALTH INSURANCE COMPANY a/k/a BLUE SHIELD and/or BLUE CROSS-BLUE SHIELD OF

Order Approving Joint Motion to Suspend Discovery

TEXAS, WALGREEN TEXAS COMPANY, SOMMERS DRUG STORE, RIEGER-MEDI-SAVE, INC. d/b/a GIBSONS PHARMACY

ORDER APPROVING JOINT MOTION TO SUSPEND DISCOVERY AND TO MODIFY ORDER PRELIMINARY TO PRE-TRIAL CONFERENCE

On this 23rd day of January, 1976, came on to be considered the Joint Motion to Suspend Discovery and to Modify Order Preliminary to Pre-Trial Conference filed by the parties herein. Having reviewed the Motion and the file in this cause, the Court finds that reasonable grounds exist for the granting of such Motion.

Accordingly, it is hereby ORDERED that the Joint Motion to Suspend Discovery and to Modify Order Preliminary to Pre-Trial Conference should be and the same is hereby and in all things GRANTED.

1. As of this date, all discovery in this action is suspended in order that Defendants may present their McCarran-Ferguson Act defenses to the Court for determination.

2. On or before thirty (30) days after date hereof, Defendants shall file appropriate motions to dismiss based upon their defenses asserted under the McCarran-Ferguson Act, together with any appropriate supporting materials and memorandum briefs.

3. On or before twenty (20) days after the motions and briefs of Defendants are filed, Plaintiffs shall file their responses and briefs, together with any necessary supporting materials.

4. On or before ten (10) days after the responses and briefs of Plaintiffs are filed, Defendants shall file any replies that they deem necessary, together with any nec-

essary supplemental supporting materials. All discovery shall be suspended pending a final determination of the validity of the McCarran-Ferguson Act defenses asserted by Defendants.

5. If it is ultimately determined by the Court or by an appellate court that the McCarran-Ferguson Act defenses of Defendants are not valid, the parties shall complete discovery on the merits within ninety (90) days after the date of such final determination.

6. A conference of attorneys will be held on or before thirty (30) days after the completion of discovery.

7. Counsel for the respective parties will submit their proposed agreed pre-trial orders within sixty (60) days after the completion of discovery.

8. In the event counsel are unable to agree on a form of a proposed agreed pre-trial order, then counsel for each party is directed to submit his version of an appropriate pre-trial order within ten (10) days after the expiration of the date set forth in Paragraph 7 hereof.

ENTERED this 23rd day of January, 1976.

/s/ John H. Wood, Jr.
JOHN H. WOOD, JR.
United States District Judge

APPROVED:

TINSMAN & HOUSER, INC.
1900 National Bank of Commerce Bldg.
San Antonio, Texas 78205

By: /s/ Joel H. Pullen
JOEL H. PULLEN

Attorneys for Plaintiffs

COX, SMITH, SMITH, HALE & GUENTHER
INCORPORATED
500 National Bank of Commerce Bldg.
San Antonio, Texas 78205

By: /s/ Keith E. Kaiser
KEITH E. KAISER
Attorneys for Defendant
Group Life and Health Insurance Company

GROCE, LOCKE & HEBDON
2000 Frost Bank Tower
San Antonio, Texas 78205

By: /s/ Charles R. Shaddox
CHARLES R. SHADDOX
Attorneys for Defendant
Rieger/Medi-Save Pharmacies, Inc.

KAMPMANN, CHURCH & BURNS
120 Tesoro Building
8700 Tesoro Drive
San Antonio, Texas 78217

By: /s/ William C. Church, Jr.
WILLIAM C. CHURCH, JR.
Attorneys for Defendant
Walgreen Texas Co.

GRESHAM, DAVIS, GREGORY, WORTHY & MOORE
1800 Frost Bank Tower
San Antonio, Texas 78205

By: /s/ Richard B. Moore
RICHARD B. MOORE
Attorneys for Defendant
The Sommers Drug Stores Company

MOTION OF DEFENDANT GROUP LIFE AND HEALTH INSURANCE COMPANY TO DISMISS, FEBRUARY 23, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

MOTION OF DEFENDANT
GROUP LIFE AND HEALTH INSURANCE COMPANY
TO DISMISS

Defendant Group Life and Health Insurance Company, also known as Blue Shield of Texas ("Blue Shield") (incorrectly designated by Plaintiffs as Blue Shield and/or Blue Cross-Blue Shield of Texas), moves the Court to dismiss Plaintiffs' Original Complaint pursuant to Rules 12(b) and 56, Federal Rules of Civil Procedure, and bases this Motion on the following grounds:

1. This Court lacks jurisdiction over the subject matter of the Complaint because Blue Shield is engaged in the "business of insurance", and all matters alleged by Plaintiffs herein arise out of the "business of insurance", which "business" is regulated by state law. Therefore, Blue Shield is exempted from the application of the Sherman and Clayton Acts by the provisions of the McCarran-Ferguson Act (15 U.S.C. § 1011, *et seq.*).

2. The Complaint fails to state a claim against Blue Shield upon which relief can be granted because, as shown in paragraph 1 above, the Court lacks jurisdiction over the subject matter.

3. In the absence of any action based upon federal law, as shown above, this Court may not entertain Plaintiffs' pendent claims based upon alleged violations of the Texas antitrust laws.

4. Blue Shield further moves the Court to treat this Motion as one for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, and to consider the following:

A. The Affidavit to Steve G. McDonald which is attached hereto as Exhibit "A" and incorporated herein by reference; and

B. The oral depositions of A. W. Pogue, Robert C. McAnelly, Paul D. Connor and Donald H. Bunnell, previously filed in the records of this proceeding, and incorporated herein by reference.

5. This Motion is supported by a memorandum brief filed contemporaneously herewith.

WHEREFORE, Blue Shield prays that this Court dismiss Plaintiffs' Original Complaint and that this Motion be treated as one for summary judgment.

Respectfully submitted,

COX, SMITH, SMITH, HALE &
GUENTHER INCORPORATED
500 National Bank of
Commerce Bldg.
San Antonio, Texas 78205

Motion of Defendant Group Life and Health to Dismiss

/s/ J. Burleson Smith
J. BURLESON SMITH

/s/ Keith E. Kaiser
KEITH E. KAISER

/s/ R. Laurence Macon
R. LAURENCE MACON

[Certificate of Service Omitted in Printing]

AFFIDAVIT OF STEVE G. McDONALD IN SUPPORT OF MOTION OF DEFENDANT GROUP LIFE AND HEALTH INSURANCE COMPANY TO DISMISS, FEBRUARY 23, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

AFFIDAVIT OF STEVE G. McDONALD IN SUPPORT OF MOTION OF DEFENDANT GROUP LIFE AND HEALTH INSURANCE COMPANY TO DISMISS

STATE OF TEXAS)
)
COUNTY OF DALLAS)

The witness, having been duly sworn, deposes and says:

1. My name is Steve G. McDonald. I reside at 6517 Turner Way, Dallas, Texas.

2. I make this Affidavit in support of the Motion of Defendant Group Life and Health Insurance Company to Dismiss and I have personal knowledge of the facts set forth herein.

3. I am an attorney and I have been licensed to practice in the State of Texas continuously since 1966. I am employed by Group Hospital Service, Inc. ("GHS").

4. With the exception of a nine-month period, I have been continuously employed by GHS since 1960. Since January, 1966, I have been in the legal division of GHS as one of its associate counsel.

5. GHS is a non-profit corporation duly organized and existing under Chapter 20 of the Texas Insurance Code, Tex. Ins. Code Ann. art. 20.01, *et seq.* GHS issues pre-

paid coverage which provides hospital benefits to its subscribers through contracts between the company and hospitals. GHS also issues prepaid coverage which provides benefits to its subscribers on an indemnity basis for medical and surgical care.

6. The Blue Cross service mark is owned by the Blue Cross Association. GHS is authorized by the Blue Cross Association to use the Blue Cross service mark and operates under the name of Blue Cross of Texas. Hereinafter, GHS will be referred to as "Blue Cross".

7. Group Life and Health Insurance Company ("GL&H") is a corporation duly organized and existing under Chapter 3 of the Texas Insurance Code, Tex. Ins. Code Ann. art. 3.01, *et seq.*, and is authorized by the State Board of Insurance of the State of Texas to transact the business of life, health and accident insurance within the State of Texas.

8. The Blue Shield service mark is owned by the National Association of Blue Shield Plans. GL&H is authorized by the National Association of Blue Shield Plans to use the Blue Shield service mark and operates under the trade name of Blue Shield of Texas. Hereinafter, GL&H will be referred to as "Blue Shield".

9. With the exception of a few qualifying shares issued to directors of Blue Shield, all of the stock of Blue Shield is owned by Blue Cross, a non-profit corporation.

10. The legal staff of Blue Cross, of which I am a member, provides legal services to Blue Shield pursuant to a management contract between the two companies.

11. Since 1968, I have been primarily responsible for the filing of Blue Shield's policy forms and related documents with the Commissioner of Insurance of the State of Texas. Since 1966, I have participated in the preparation of Blue Shield's policy forms and related documents.

12. In 1969, Blue Shield determined to issue prescription drug insurance coverage in the form of a supplemental policy to certain of its medical-surgical policies. I assisted in the preparation of the supplemental policy. A true and correct copy of the supplemental policy is attached hereto as Exhibit "A" and incorporated herein by reference.

13. Thereafter, I assisted in the preparation of the Participating Drug Pharmacy Agreement, the purposes of which were to comply with and effectuate the terms and provisions of the prescription drug insurance policy, to satisfy Blue Shield's contractual obligations to its insureds and to establish an efficient system of claims-settlement procedures for the insureds under the policy. A true and correct copy of the Participating Drug Pharmacy Agreement is attached hereto as Exhibit "B" and incorporated herein by reference.

14. On March 14, 1969, prior to issuance or use of the prescription drug insurance policy or the Participating Drug Pharmacy Agreement, I forwarded two copies of each to the State Board of Insurance, pursuant to the provisions of Tex. Ins. Code Ann. art. 3.42. A true and correct copy of my letter of transmittal dated March 14, 1969, is attached hereto as Exhibit "C" and incorporated herein by reference.

15. Thereafter, Blue Shield received from the Commissioner of Insurance a copy of Official Order No. 29701, dated June 18, 1969, which disapproved the prescription drug insurance program. A true and correct copy of Official Order No. 29701, dated June 18, 1969, is attached hereto as Exhibit "D" and incorporated herein by reference.

16. As a result of the disapproval order, Blue Shield did not issue or use the proposed prescription drug insurance program.

17. Subsequently, Blue Shield received from the Commissioner of Insurance a copy of Official Order No. 30413, dated September 30, 1969, which Order exempted the prescription drug insurance program from the approval requirements of Tex. Ins. Code Ann. art. 3.42, and which authorized Blue Shield to issue and use the program in the State of Texas. A true and correct copy of Official Order No. 30413, dated September 30, 1969, is attached hereto as Exhibit "E" and incorporated herein by reference.

18. It is Blue Shield's policy that the option of entering into a Participating Drug Pharmacy Agreement is available to any licensed pharmacy in the State of Texas. In 1969, Blue Shield made a statewide mailing to licensed pharmacies advising them of this option.

19. Since September 30, 1969, Blue Shield has conducted the prescription drug insurance program as authorized by the exemption order (Exhibit "E").

20. The exemption order (Exhibit "E") did not relieve Blue Shield from any of the regulatory requirements set out in the Texas Insurance Code, nor did it relieve Blue Shield from any of the regulation or supervision established by the State Board of Insurance. In conducting the prescription drug insurance program, Blue Shield has continued to be subject to all of the statutory and administrative regulations of the State of Texas and the State Board of Insurance.

21. In 1974 Blue Shield agreed with Bexar County Medical Foundation to provide certain group hospitalization and medical-surgical insurance coverage to Bexar County groups desiring such coverage. Included in the proposed coverage was prescription drug insurance.

22. I assisted in preparing the prescription drug insurance policy form and other documents necessary for

Blue Shield to be able to provide such coverage. The prescription drug insurance program prepared for use in connection with such coverage is virtually identical to the program submitted to the State Board of Insurance in 1969.

23. On September 23, 1974, prior to issuance or use of any of the policies proposed under the agreement with Bexar County Medical Foundation, I forwarded a copy of each of them to the State Board of Insurance, pursuant to Tex. Ins. Code Ann. art. 3.42. True and correct copies of the prescription drug insurance policy and my letter of transmittal dated September 23, 1974, are attached hereto as Exhibits "F" and "G", respectively, and incorporated herein by reference.

24. Thereafter, Blue Shield received from the Commissioner of Insurance a copy of Official Order No. 45511, dated October 1, 1974, which approved, among other things, the Bexar County prescription drug insurance program. A true and correct copy of Official Order No. 45511, dated October 1, 1974, is attached hereto as Exhibit "H" and incorporated herein by reference. Since receipt of Official Order No. 45511, Blue Shield has been issuing the prescription drug insurance to groups in Bexar County, Texas.

25. After receipt of the approval order (Exhibit "H"), Blue Shield offered to virtually all licensed pharmacies in San Antonio, Texas, the opportunity of entering into a Participating Drug Pharmacy Agreement.

26. Blue Shield has not been notified by the Commissioner of Insurance of Texas of any intention to amend, modify or withdraw the approval order (Exhibit "H").

27. The Attorney General of Texas has initiated no action against Blue Shield as a result of its issuance or use of the prescription drug insurance program.

Affidavit of Steve G. McDonald

28. In all operations under the prescription drug insurance program, Blue Shield has transacted no business other than the business of insurance pursuant to the authority granted by the State Board of Insurance. Blue Shield's conduct under the program has always been with a view toward strict compliance with the statutory and regulatory requirements of the State of Texas and the state agencies that regulate Blue Shield's business.

29. Blue Shield is not engaged in the sale or dispensing of prescription drugs as a manufacturer, wholesaler or retailer. Blue Shield is engaged solely in transacting the business of life, health and accident insurance.

30. Nine of the eighteen Plaintiffs in this action are Participating Pharmacies pursuant to a Participating Drug Pharmacy Agreement with Blue Shield.

/s/ Steve G. McDonald
STEVE G. MCDONALD

SUBSCRIBED AND SWORN TO BEFORE ME this 19 day of February, 1976.

/s/ Betty Jane McKinney
BETTY JANE MCKINNEY

Notary Public in and for
Dallas County, Texas

GROUP LIFE AND HEALTH INSURANCE COMPANY DRUG SUPPLEMENT POLICY, DATED APRIL 1, 1969 (ATTACHED AS "EXHIBIT A" TO AFFIDAVIT OF STEVE G. McDONALD, FEBRUARY 23, 1976)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

GROUP LIFE & HEALTH
Insurance Company

[LOGO]

Dallas, Texas
has issued this

DRUG SUPPLEMENT

to the

EXPERIENCE RATED GROUP
MEDICAL-SURGICAL INSURANCE POLICY

NO. 123456

issued heretofore or simultaneously herewith, to

XYZ COMPANY, INC.

(therewith and herein called the Employer)

as of April 1, 1969

(herein called the supplemental policy date)

and thereby agrees to provide the
additional benefits detailed herein,

all in accordance with the conditions and provisions hereof, including those set out on the following pages which are a part of this supplement as fully as if recited over the signatures hereto affixed.

This supplement becomes effective on the supplemental policy date, and is issued in consideration of the application herefor made by the Employer. It will be continued

in force subject to the timely payment of premiums herefor, until terminated in accordance with the provisions of the Article captioned "Termination of Drug Coverage."

IN WITNESS WHEREOF, the Insurer has caused this supplement to be executed at its Home Office in Dallas, Texas.

President

Countersigned:

Registrar

[Disapproved By Order No. 29701, June 18, 1969,
Commissioner of Insurance, State of Texas]

ARTICLE I—SUPPLEMENTAL DEFINITIONS

AS USED HEREIN:

A. GROUP HOSPITALIZATION CONTRACT means an instrument issued by Group Hospital Service, Inc. of Dallas, Texas to the Employer, bearing the same number as that appearing on the "Experience Rated Group Medical-Surgical Insurance Policy" described on the face page hereof, including any supplements thereto.

B. GROUP MEDICAL-SURGICAL INSURANCE POLICY means the "Experienced Rated Group Medical-Surgical Insurance Policy" described on the face page hereof.

C. BASIC COVERAGE means the total amount of protection afforded a participant by both the group hospitalization contract and the group medical-surgical insurance policy on account of expense incurred for drugs and medicines.

D. COVERED DRUGS means any Prescription Legend Drug or injectable insulin:

(1) which is ordered by a physician;

(2) for which a written prescription order is customarily prepared;

(3) for which a separate charge is customarily made; and

(4) which is not entirely consumed at the time and place that the prescription order is written.

E. PRESCRIPTION LEGEND DRUG means any medicinal substance—the label of which, under the Federal Food, Drug, and Cosmetic Act, as amended, is required to bear the legend: "Caution: Federal Law prohibits dispensing without prescription."

F. DRUG DEDUCTIBLE means the amount to be paid by a participant toward the cost of the initial purchase of each covered drug and toward the cost of each refill purchase of each covered drug and for each such purchase and is equal to the amount specified in Item 20 of the schedule.

G. PRESCRIPTION ORDER means a request for medication by a physician.

H. PHARMACY means a licensed establishment where Prescription Legend Drugs are dispensed by a person who is not a practitioner of the healing arts and who is licensed to dispense such drugs under the laws of the state in which he practices.

I. PROVIDER means any pharmacy, physician, or any other person or organization legally licensed to dispense drugs.

J. PARTICIPATING PROVIDER means a provider located in the State of Texas with which the Insurer or Group Hospital Service, Inc. of Dallas, Texas, has entered into a written contract for the rendition of covered drugs for which benefits are provided by this supplement, or any provider located outside the State of Texas with which any other Blue Cross or Blue Shield Plan has entered into such a contract.

K. NON-PARTICIPATING PROVIDER means a provider who is not a participating provider.

ARTICLE II—TERMS AND PROVISIONS

A. All definitions, limitations, and provisions recited in the group medical-surgical insurance policy are hereby adopted and shall be construed to apply in like manner and with equal force to this supplement, any provisions insofar as they are in conflict with provisions

herein contained, in which case the provisions of this supplement shall govern in any interpretations of rights or obligations accruing hereunder.

B. It is hereby specially declared that the non-duplication provisions set forth in Article IV, Section F, of the group medical-surgical insurance policy are applicable to this supplement except insofar as they are modified by the provisions of the following subsections:

1. Determination of drug benefits under this supplement shall be made in relation to each "claim," consisting of any combination of charges for covered drugs which are incurred within a calendar year and submitted at one time by or on behalf of a participant to the Insurer at his request for payment of drug benefits applicable thereto.

2. When the non-duplication provisions are applicable, the benefits of the other coverage and all benefits provided under the basic coverage on the items composing the claim shall be deducted from the charges for all such items, and the Insurer will pay the remainder; provided, however, that in no event shall these provisions be construed to increase the amount of total benefits which would be payable under this supplement on account of such claim in the absence of other coverage.

ARTICLE III—BENEFITS

A. Subject to the exclusions, limitations, and all other terms and provisions set forth herein, any participant shall be entitled to receive covered drugs from any participating provider as a benefit hereunder and shall be required to pay no more than the drug deductible for each of such covered drugs.

B. Any participant receiving covered drugs from a non-participating provider shall be entitled to benefits equal to 75% of the result of the usual and customary charges for such covered drugs as determined by the Insurer, reduced by the drug deductible for such covered drugs; except that for covered drugs received from a non-participating provider located outside of the State of Texas, such participant shall be entitled to benefits equal to 100% of the usual and customary charges for such covered drugs, reduced by the drug deductible for each such covered drugs.

C. Payment of benefits by the Insurer to the provider or to the Employer, as the Insurer may elect, shall constitute full discharge of all responsibility of the Insurer to the employee on account of care rendered to any participant under his coverage.

ARTICLE IV—LIMITATIONS AND EXCLUSIONS

In addition to the limitations and exclusions stipulated in Article VI of the group medical-surgical insurance policy, it is provided that no drug benefit shall be available for any of the following:

A. Any charge for a contraceptive medication, even if such medication is a Prescription Legend Drug, and any charge for therapeutic devices or appliances (including but not by way of limitation, hypodermic needles, syringes, support garments, and other non-medicinal substances) regardless of their intended use.

B. Any charge for services other than Covered Drugs, including administration of a Prescription Legend Drug or injectable insulin.

C. The charge for more than a 34-day supply of a medication, except that Blue Cross-Shield will cover 100

unit doses (e.g. tablet or capsule) of a natural thyroid product and 100 unit doses of nitroglycerine.

D. The charge for any prescription refill in excess of the number specified by the physician, or any refill dispensed after one year from the physician's order.

E. Covered Drugs for which no charge is customarily made.

F. Covered Drugs to the extent that a benefit is provided therefor under the basic coverage.

ARTICLE V—TERMINATION OF DRUG COVERAGE

A. This supplement and coverage of all participants hereunder shall automatically terminate:

1. When the group medical-surgical insurance policy is terminated for any reason;

2. Upon default in payment of supplemental premiums, subject to the grace period and reinstatement provided for in the group medical-surgical insurance policy;

3. Upon cancellation of this supplement in any manner as specified in the group medical-surgical insurance policy for cancellation thereof.

B. The coverage of any participant under this supplement shall automatically terminate when his coverage under the group medical-surgical insurance policy is terminated, subject, however, to refund of supplemental premiums paid in advance, as therein provided.

C. Under no circumstances shall the Plan be obligated to notify any participant of the termination of this supplement or of his coverage hereunder.

Group Life and Health Drug Supplement Policy

D. No conversion privilege afforded a participant under the group medical-surgical insurance policy shall be deemed to apply to this supplement.

ARTICLE VI—GENERAL PROVISIONS

A. DISCLOSURE AUTHORIZATION. In consideration of the Insurer's having waived physical examination in connection with the application herefor, the employee on behalf of himself and his covered dependents and sponsored dependents shall be deemed to have authorized any provider to make available to the Insurer information relating to all prescription orders, copies thereof and other records as needed by the Insurer.

B. The Insurer shall not be liable for any claim or demand for injuries or damage arising out of or in connection with the manufacturing, compounding, dispensing or use of any Prescription Legend Drugs or insulin, whether or not covered under this supplement.

C. The Insurer reserves the right to deny benefits for any drug prescribed or dispensed in a manner contrary to normal medical or pharmaceutical practice.

PARTICIPATING DRUG PHARMACY AGREEMENT (ATTACHED AS "EXHIBIT B" TO AFFIDAVIT OF STEVE G. McDONALD, FEBRUARY 23, 1976)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

PARTICIPATING DRUG PHARMACY AGREEMENT

between

GROUP LIFE & HEALTH INSURANCE COMPANY
(Herein called Blue Shield)
Dallas, Texas

and

_____

(Herein called the Participating Pharmacy)

_____

(Type of Organization)

_____

(Address)

Pharmacy Permit No. _____

1. The Participating Pharmacy agrees that all pharmacists dispensing drugs in its behalf are to be considered participating pharmacists. The pharmacists currently employed by the Participating Pharmacy are:

Name	License No.
_____	_____
_____	_____
_____	_____

2. The Participating Pharmacy shall dispense drugs for which benefits are provided under Blue Shield's Drug Supplement CC-OHDS-2 or any other supplement or contract upon written notice by Blue Shield, to persons who are entitled to benefits under such supplements, all in accordance with the terms of such instruments.

3. The Participating Pharmacy agrees to accept as full payment for each drug provided under Section 2, above, of this agreement an amount equal to the total of the acquisition cost for such drug and a professional dispensing fee of $————. Acquisition cost, as used in this agreement, means the actual cost of a drug to the Participating Pharmacy, as determined under rules and regulations published by Blue Shield.

4. Blue Shield agrees to pay to the Participating Pharmacy for each drug dispensed under Section 2 of this agreement an amount equal to the excess, if any, of the amount stipulated in Section 3, above, of this agreement over the drug deductible amount, if any, stipulated in the instrument under which drug benefits are available, and the Participating Pharmacy agrees that its charge for such drug to any other person shall not exceed such drug deductible.

5. Blue Shield agrees to provide the Participating Pharmacy with a manual which will stipulate the drugs for which benefits are available and drug deductible applicable to each person to whom drugs are to be dispensed under Section 2 of this agreement, and in which identification codes for certain of the drugs for which benefits are provided will be stipulated. The Participating Pharmacy agrees to include on those claims for benefits the code for the drug for which

claim is made if such code is shown in the Participating Pharmacy's current manual.

6. All contracts or transactions in which the Participating Pharmacy engages involving dispensing of drugs shall be between the Participating Pharmacy and the patient and Blue Shield shall not be a party thereto.

7. The Participating Pharmacy agrees that Blue Shield shall have the right to inspect all records pertaining to persons eligible for benefits under its drug supplements at any time during regular business hours.

8. The Participating Pharmacy agrees not to engage in any advertising relative to Blue Shield drug supplements without prior approval of Blue Shield.

9. This agreement may be terminated at any time by either party by giving at least 15 days prior written notice to the other party.

GROUP LIFE & HEALTH INSURANCE COMPANY

Dated at Dallas, Texas this

——day of————, 19—. By————————
President

————————

Dated at ————, Texas this

——day of————, 19—. By————————
Title:

LETTER OF TRANSMITTAL OF POLICY AND AGREEMENT TO STATE BOARD OF INSURANCE, DATED MARCH 14, 1969 (ATTACHED AS "EXHIBIT C" TO AFFIDAVIT OF STEVE G. McDONALD, FEBRUARY 23, 1976)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

GROUP LIFE & HEALTH
Insurance Company

[LOGO]

March 14, 1969

Mr. Robert C. McAnelly
Supervisor, AHGL Policy Unit
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701

Re: Form No. CC-OHDS-2
Form No. PDPA-1

Dear Mr. McAnelly:

We submit herewith for your approval Form No. CC-OHDS-2 which is a Drug Supplement to our Custom Coverage Group Medical-Surgical Insurance Policy, Form No. MSCC-1, which was approved by your department under Order No. 19427 on 9-27-65. We will use application Form No. MSCC-App. 1, which was approved under the same order number.

I am also enclosing Form PDPA-1 which is the Participating Drug Pharmacy Agreement that Group Life & Health Insurance Company will enter into with pharmacies for the provision of benefits under this supplement.

Letter of Transmittal of Policy and Agreement

I am enclosing a duplicate copy of the supplement and agreement together with this letter in order that you may stamp them and return to us.

If we can furnish additional information concerning these filings, please advise.

Sincerely yours,

GROUP LIFE & HEALTH
INSURANCE COMPANY

/s/ Steve G. McDonald
STEVE G. McDONALD

[Disapproved By Order No. 29701, Jun. 18, 1969,
Commissioner of Insurance, State of Texas]

OFFICIAL ORDER NO. 29701 OF TEXAS COMMISSIONER OF INSURANCE, JUNE 18, 1969 (ATTACHED AS "EXHIBIT D" TO AFFIDAVIT OF STEVE G. McDONALD, FEBRUARY 23, 1976)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

No. 29701

OFFICIAL ORDER
of the
COMMISSIONER OF INSURANCE
of the
STATE OF TEXAS
AUSTIN, TEXAS

Date June 18, 1969

Subject Considered:

APPROVAL OF FORMS

General remarks and official action taken:

On this date came on for consideration by the Commissioner of Insurance application for approval of Form No. CC-OHDS-2 filed by Group Life & Health Insurance Company and the Commissioner, having found that said form does not comply with the requirements of Article 3.42, Texas Insurance Code, as amended, hereby disapproves said form under authority of the cited statute, and herenow states his grounds for such disapproval as follows:

Under provision of said form the differentiation of benefits as between "participating provider" dispensed drugs and "non-participating provider" dispensed drugs constitutes unfair discrimination within the meaning of Article 21.21, Texas Insurance Code.

Official Order No. 29701 of Texas Commissioner of Ins.

The provisions of said form are violative of the anti-trust and monopoly statutes of this state.

Prepared, recommended and approved by:

/s/ R. C. McAnelly
R. C. McANELLY, Supervisor
Health and Group Life Policy Unit
Life Division

COMMISSIONER OF INSURANCE

By /s/ Don B. Odum
DON B. ODUM
Section Manager
Life Division

OFFICIAL ORDER NO. 30413 OF TEXAS COMMISSIONER OF INSURANCE, DATED SEPTEMBER 30, 1969 (ATTACHED AS "EXHIBIT E" TO AFFIDAVIT OF STEVE G. McDONALD, FEBRUARY 23, 1976)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

No. 30413

OFFICIAL ORDER
of the
COMMISSIONER OF INSURANCE
of the
STATE OF TEXAS
AUSTIN, TEXAS

Date Sep. 30, 1969

Subject Considered:

POLICY FORM APPROVAL—

EXEMPTION FROM THE REQUIREMENTS OF ARTICLE 3.42, TEXAS INSURANCE CODE

General remarks and official action taken:

Pursuant to the authority granted by Article 3.42, Paragraph (e) of the Texas Insurance Code, the Commissioner of Insurance hereby exempts from the requirements of said Article Policy Form CC-OHDS-2 submitted by Group Life and Health Insurance Company, Dallas, Texas; and this exemption shall remain effective pending further orders from the Commissioner of Insurance. To the extent that this exemption order conflicts with Commissioner's Order No. 29701, dated June 18, 1969, Order No. 29701 is superseded.

This exemption order shall also apply to any form, identical in content to Form CC-OHDS-2, delivered, issued or used in this state by any licensed insurer.

This exemption order is issued and published for the reason that, in the opinion of the Commissioner, Article 3.42 of the Texas Insurance Code may not practicably be applied at this time to the forms covered by the exemption. The exempt forms are described as drug service contracts, which confer upon the policyholder the right to obtain certain prescribed drugs at a cost fixed in the contract, the insurer having entered into participating agreements with dispensing pharmacies to supply the prescribed drugs to its policyholders.

The policy forms herein exempt, used in connection with the participating agreements with pharmacies as described above, have raised questions under the Texas anti-trust and anti-monopoly laws, and such questions have been referred to the Attorney General of the State of Texas. Pending such time as these questions are resolved, the exemptions authorized by this Order are granted for the purpose of preventing any competitive advantages which foreign insurance companies, issuing policies outside of Texas but including Texas residents under their coverage, might have over domestic companies seeking to issue equivalent policy contracts.

/s/ Clay Cotten
CLAY COTTEN
Commissioner of Insurance

Prepared by:

/s/ Paul D. Connor
PAUL D. CONNOR
Assistant to the Commissioner

GROUP LIFE AND HEALTH INSURANCE COMPANY DRUG SUPPLEMENT POLICY, DATED OCTOBER 1, 1974 (ATTACHED AS "EXHIBIT F" TO AFFIDAVIT OF STEVE G. McDONALD, FEBRUARY 23, 1976)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

[LOGO]

GROUP LIFE & HEALTH INSURANCE CO.
(Herein called Blue Shield of Texas)

Dallas, Texas

has issued this

DRUG SUPPLEMENT

to the

EXPERIENCE RATED GROUP HOSPITALIZATION AND MEDICAL-SURGICAL CONTRACT

NO. 34567

issued heretofore or simultaneously herewith, to

ABC COMPANY
(therewith and herein called the Employer)

as of October 1, 1974 (herein called the supplemental contract date) and thereby agrees to provide the additional benefits detailed herein,

all in accordance with the conditions and provisions hereof, including those set out on the following pages which are a part of this supplement as fully as if recited over the signatures hereto affixed.

This supplement becomes effective on the supplemental contract date, and is issued in consideration of the appli-

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

cation herefor made by the Employer. It will be continued in force subject to the timely payment of premiums herefor, until terminated in accordance with the provisions of the Article captioned "Termination of Drug Coverage."

IN WITNESS WHEREOF, Blue Shield of Texas has caused this supplement to be executed at its Home Office in Dallas, Texas.

/s/ Tom L. Beauchamp, Jr.
President

/s/ [Illegible]
Secretary

Countersigned:

Registrar

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

ARTICLE I—SUPPLEMENTAL DEFINITIONS

AS USED HEREIN:

A. BASIC CONTRACT means the "Experience Rated Group Hospitalization and Medical-Surgical Contract" described on the face page hereof.

B. BASIC COVERAGE means the total amount of protection afforded a participant by the basic contract on account of expense incurred for drugs and medicines.

C. COVERED DRUGS means any Prescription Legend Drug or injectable insulin:

(1) which is ordered by a physician;

(2) for which a written prescription order is customarily prepared;

(3) for which a separate charge is customarily made;

(4) which is not entirely consumed at the time and place that the prescription order is written; and

(5) which is received by the participant while covered hereunder.

D. PRESCRIPTION LEGEND DRUG means any medicinal substance—the label of which, under the Federal Food, Drug, and Cosmetic Act, as amended, is required to bear the legend: "Caution: Federal Law prohibits dispensing without prescription."

E. DRUG DEDUCTIBLE means the amount to be paid by a participant toward the cost of the initial purchase of each covered drug and toward the cost of each refill purchase of each covered drug and for each such purchase and is equal to two dollars ($2.00).

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

F. PRESCRIPTION ORDER means a request for medication by a physician.

G. PHARMACY means a licensed establishment where Prescription Legend Drugs are dispensed by a person who is not a practitioner of the healing arts and who is licensed to dispense such drugs under the laws of the state in which he practices.

H. PROVIDER means any pharmacy, physician, or any other person or organization legally licensed to dispense drugs.

I. PARTICIPATING PROVIDER means a provider located in the State of Texas with which Blue Shield of Texas or Group Hospital Service, Inc. of Dallas, Texas, has entered into a written contract for the rendition of covered drugs for which benefits are provided by this supplement, or any provider located outside the State of Texas with which any other Blue Cross or Blue Shield Plan has entered into such a contract.

J. NON-PARTICIPATING PROVIDER means a provider who is not a participating provider.

ARTICLE II—TERMS AND PROVISIONS

A. All definitions, limitations, and provisions recited in the basic contract are hereby adopted and shall be construed to apply in like manner and with equal force to this supplement and any other provisions

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

insofar as they are in conflict with provisions herein contained, in which case the provisions of this supplement shall govern in any interpretation of rights or obligations accruing hereunder.

B. It is hereby specially declared that the non-duplication provisions set forth in Article V, Section E, of the basic contract are applicable to this supplement except insofar as they are modified by the provisions of the following subsections:

1. Determination of drug benefits under this supplement shall be made in relation to each "claim," consisting of any combination of charges for covered drugs which are incurred within a calendar year and submitted at one time by or on behalf of a participant to Blue Shield of Texas at his request for payment of drug benefits applicable thereto.

2. When the non-duplication provisions are applicable, the benefits of the other coverage and all benefits provided under the basic coverage on the items composing the claim shall be deducted from the charges for all such items, and Blue Shield of Texas will pay the remainder; provided, however, that in no event shall these provisions be construed to increase the amount of total benefits which would be payable under this supplement on account of such claim in the absence of other coverage.

ARTICLE III—BENEFITS

A. Subject to the exclusions, limitations, and all other terms and provisions set forth herein, any participant

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

shall be entitled to receive covered drugs from any participating provider as a benefit hereunder and shall be required to pay no more than the drug deductible for each of such covered drugs.

B. Any participant receiving covered drugs from a non-participating provider shall be entitled to benefits equal to 75% of the result of the reasonable charge for such covered drugs as determined by Blue Shield of Texas, reduced by the drug deductible for such covered drugs; except that for covered drugs received from a non-participating provider located outside of the State of Texas, such participant shall be entitled to benefits equal to 100% of the reasonable charge for such covered drugs, reduced by the drug deductible for each such covered drugs.

C. Payment of benefits by Blue Shield of Texas to the provider or to the employee, as Blue Shield of Texas may elect, shall constitute full discharge of all responsibility of Blue Shield of Texas to the employee on account of care rendered to any participant under his coverage.

ARTICLE IV—LIMITATIONS AND EXCLUSIONS

In addition to the limitations and exclusions stipulated in Article VIII of the basic contract, it is provided that no drug benefit shall be available for any of the following:

A. Any charge for a contraceptive medication, even if such medication is a Prescription Legend Drug, and any charge for therapeutic devices or appliances (including but not by way of limitation, hypodermic needles, syringes, support garments, and other non-medicinal substances) regardless of their intended use;

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

B. Any charge for services other than Covered Drugs, including administration of a Prescription Legend Drug or injectable insulin;

C. The charge for more than a 34-day supply of a medication, except that Blue Shield of Texas will cover 100 unit doses (e.g. tablet or capsule) of a natural thyroid product and 100 unit doses of nitroglycerine;

D. The charge for any prescription refill in excess of the number specified by the physician, or any refill dispensed after one year from the physician's order;

E. Covered Drugs for which no charge is customarily made;

F. Covered Drugs to the extent that a benefit is provided therefor under the basic coverage;

G. Covered Drugs which are not medically necessary.

ARTICLE V—TERMINATION OF DRUG COVERAGE

A. This supplement and coverage of all participants hereunder shall automatically terminate:

1. When the basic contract is terminated for any reason;
2. Upon default in payment of supplemental premiums, subject to the grace period and reinstatement provided for in the basic contract;
3. Upon cancellation of this supplement in any manner as specified in the basic contract for cancellation thereof.

B. The coverage of any participant under this supplement shall automatically terminate when his coverage under the basic contract is terminated, subject, however, to refund of supplemental premiums paid in advance, as therein provided.

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

C. Under no circumstances shall Blue Shield of Texas be obligated to notify any participant of the termination of this supplement or of his coverage hereunder.

D. No conversion privilege afforded a participant under the basic contract shall be deemed to apply to this supplement.

ARTICLE VI—GENERAL PROVISIONS

A. DISCLOSURE AUTHORIZATION. In consideration of Blue Shield of Texas having waived a physical examination in connection with the application herefor, the employee on behalf of himself and his covered dependents shall be deemed to have authorized any provider to make available to Blue Shield of Texas information relating to all prescription orders, copies thereof and other records as needed by Blue Shield of Texas.

B. Blue Shield of Texas shall not be liable for any claim or demand for injuries or damage arising out of or in connection with the manufacturing, compounding, dispensing or use of any Prescription Legend Drug or insulin, whether or not covered under this supplement.

C. Blue Shield of Texas reserves the right to deny benefits for any drug prescribed or dispensed in a manner contrary to normal medical or pharmaceutical practice.

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

LETTER OF TRANSMITTAL OF POLICY TO STATE BOARD OF INSURANCE, DATED SEPTEMBER 23, 1974 (ATTACHED AS "EXHIBIT G" TO AFFIDAVIT OF STEVE G. McDONALD, FEBRUARY 23, 1976)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

GROUP LIFE & HEALTH
Insurance Company

[LOGO]

Main at North Central Expressway
P. O. Box 5403
Dallas, Texas 75222

September 23, 1974

Mr. A. W. Pogue, Manager
Headquarters Section, Life Division
State Board of Insurance
1110 San Jacinto
Austin, Texas 78786

Re: MF-1, Experience Rated Group Hospitalization and Medical-Surgical Contract
MF-1-DS-1, Drug Supplement
MF-1-APP-1, Group Application Blank
MF-1-OA-1, Operating Agreement
MF-1-IA-1, Insurance Agreement

Dear Mr. Pogue:

We submit herewith for your approval the above described new contract forms.

We anticipate entering into a health care program agreement with the Bexar County Medical Foundation wherein

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

Letter of Transmittal of Policy

Blue Shield of Texas will provide benefits as set forth in Form Nos. MF-1, Article VII, and MF-1-DS-1 to groups desiring this coverage. The Bexar County Medical Foundation will provide medical-surgical benefits as set forth in a separate contract, a copy of which will be sent to you in a few days for information purposes only.

We are also submitting for your approval the operating and reinsurance agreements between Blue Cross and Blue Shield of Texas and the Bexar County Medical Foundation. The attached list indicates our internal stock control numbers used for these various forms.

Within the next few weeks we will submit the certificate-booklet and enrollment application card for your approval.

We are submitting two copies of each form described above, together with an extra copy of this letter. Will you please stamp the extra copy of each "approved" and return to us for our files. These same forms are being concurrently filed by Group Hospital Service, Inc.

If additional information is needed regarding this filing, please call me in order that we may discuss the matter more in detail by telephone.

Yours very truly,

GROUP LIFE & HEALTH
INSURANCE CO.

/s/ Steve G. McDonald
STEVE G. McDONALD

SGMcD:jc

Encs.

cc: Mr. Joe Hawkins, Mr. John Holden

Letter of Transmittal of Policy

MF-1, Experience Rated Group Hospitalization and Medical-Surgical Contract (between Blue Cross and Blue Shield and the Group)

1600-974	Face Page	
1601-974	Article I	
1602-974	Article I	(Page 2)
1603-974	Article I	(Page 3)
1604-974	Article I	(Page 4)
1605-974	Article II	
1606-974	Article II	(Page 2)
1607-974	Article II	(Page 3)
1608-974	Article III	
1609-974	Article IV	
1610-974	Article IV	(Page 2)
1611-974	Article V	
1612-974	Article V	(Page 2)
1613-974	Article V	(Page 3)
1618-974	Article VII	
1619-974	Article VII	(Page 2)
1620-974	Article VII	(Page 3)
1621-974	Article VIII	
1622-974	Article VIII	(Page 2)
1623-974	Article IX	
1624-974	Article IX	(Page 2)
1625-974	Article X	
1626-974	Article XI	
1627-974	Article XI	(Page 2)
1628-974	Article XI	(Page 3)

MF-1-DS-1, Drug Supplement

1629-974	Face Page
1630-974	Article I
1631-974	Article II
1632-974	Article III
1633-974	Article IV
1634-974	Article V
1635-974	Article VI

MF-1-APP-1, Group Application Blank

1636-974	Page 1
1637-974	Page 2

OFFICIAL ORDER NO. 45511 OF TEXAS COMMISSIONER OF INSURANCE, DATED OCTOBER 1, 1974 (ATTACHED AS "EXHIBIT H" TO AFFIDAVIT OF STEVE G. McDONALD, FEBRUARY 23, 1976)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

No. 45511

OFFICIAL ORDER
of the
COMMISSIONER OF INSURANCE
of the
STATE OF TEXAS
AUSTIN, TEXAS

Date Oct. 1, 1974

Subject Considered:

General remarks and official action taken:

On this date came on for consideration by the Commissioner of Insurance applications for approval of the forms described herein; and the Commissioner, having found that each of said forms complies with the requirements of Article 3.42, Texas Insurance Code, as amended, hereby approves each of said forms under authority of the cited statute:

Submitted By:	Identifying Form Nos.:
Group Hospital Service, Inc. Group Life & Health Insurance Company	MF-1 with; MF-1-APP-1 attached; MF-1-DS-1.

This approval is extended for use as the insurer portion of a Group Comprehensive Medical Care Plan and such approval is limited and does not constitute approval of the said form for any other use under the Texas Insurance Code.

Official Order No. 45511 of Texas Commissioner of Ins.

/s/ Don B. Odum
DON B. ODUM
COMMISSIONER OF INSURANCE

Prepared, recommended and approved by:

/s/ Mildred R. Kurt
(MRS.) MILDRED R. KURT, Supervisor
Health and Group Life Policy Unit
Life Division

MOTION OF DEFENDANT WALGREEN TEXAS CO. TO DISMISS, FEBRUARY 23, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

MOTION OF DEFENDANT, WALGREEN TEXAS CO., TO DISMISS

Defendant, WALGREEN TEXAS CO., respectfully moves the Court to dismiss Plaintiffs' Original Complaint pursuant to Rules 12(b) and 56, Federal Rules of Civil Procedure.

1.

This Motion is based on the specific grounds that this Court lacks jurisdiction over the subject matter of the Complaint, all as set out and detailed in the Motion To Dismiss of the principal Defendant, GROUP LIFE AND HEALTH INSURANCE COMPANY, and which grounds are hereby adopted in full by Defendant, WALGREEN TEXAS CO.

2.

Defendant, WALGREEN TEXAS CO., in support of this Motion to Dismiss, would adopt in full the argument and authorities as contained in the Memorandum Brief filed herein by the principal Defendant, GROUP LIFE AND HEALTH INSURANCE COMPANY.

WHEREFORE, WALGREEN TEXAS CO., prays that this Court dismiss Plaintiffs' Original Complaint or that this Motion be treated as one for Summary Judgment.

Respectfully submitted,

/s/ Wm. C. Church, Jr.
WM. C. CHURCH, JR.
8700 Tesoro Drive
Suite #120
Post Office Box 17409
San Antonio, Texas 78217
(512) 828-8261

Attorney for Defendant,
Walgreen Texas Co.

Of Counsel:

KAMPMANN, CHURCH & BURNS
8700 Tesoro Drive
Suite #120
Post Office Box 17409
San Antonio, Texas 78217

CERTIFICATE OF SERVICE

I certify a true and correct copy of the above and foregoing Motion of Defendant, WALGREEN TEXAS CO., To Dismiss, was mailed, postage prepaid, to the following counsel of record, this 23rd day of February, 1976:

Mr. Joel H. Pullen
TINSMAN & HOUSER, INC.
1900 National Bank of Commerce Building
San Antonio, Texas 78205
Attorneys for Plaintiffs

Mr. Keith E. Kaiser
COX, SMITH, SMITH, HALE & GUENTHER, INC.
500 National Bank of Commerce Building
San Antonio, Texas 78205
Attorneys for Defendant,
Group Life and Health Insurance Company

Mr. Charles R. Shaddox
GROCE, LOCKE & HEBDON
200 Frost Bank Tower
San Antonio, Texas 78205
Attorneys for Defendant,
Rieger/Medi-Save Pharmacies, Inc.

MOTION OF DEFENDANT THE SOMMERS DRUG STORES COMPANY TO DISMISS, FEBRUARY 23, 1976

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

MOTION OF DEFENDANT, THE SOMMERS DRUG STORES COMPANY, TO DISMISS

Comes now Defendant, THE SOMMERS DRUG STORES COMPANY ("Sommers"), and files this its Motion to Dismiss and says:

1. The grounds for dismissal set forth in the MOTION OF DEFENDANT, GROUP LIFE AND HEALTH INSURANCE COMPANY ("Blue Shield") and the arguments contained in the accompanying Blue Shield Brief clearly show that the case should be dismissed against Sommers.

2. Sommers reiterates its defenses set forth as Sommers' THIRD DEFENSE in Sommers' Answer, heretofore filed in this cause, and moves the Court to dismiss this cause based upon such allegations, which are as follows:

Third Defense

The Complaint fails to state a claim upon which relief can be granted against Sommers under the antitrust laws of the United States because the Defendant GROUP LIFE AND HEALTH INSURANCE COMPANY ("Blue Cross") is engaged in the "business of insurance", and all matters alleged by Plaintiffs herein arise out of the "business of insurance", which is regulated by the Insurance Commissioner of the State of Texas and exempt

from the provisions of the Sherman and Clayton Acts pursuant to the McCarran-Ferguson Act (15 U.S.C. § 1011, *et seq.*).

3. Sommers joins Blue Shield in its Motion Number 4 to Treat Blue Shield Motion as one for summary judgment and adopts said Motion and supporting documentation.

4. This Motion is supported by the Sommers Brief filed contemporaneously herewith.

WHEREFORE, Sommers prays that this honorable court dismiss Plaintiff's Original Complaint and that this Motion be treated as one for summary judgment.

Respectfully submitted,

GRESHAM, DAVIS, GREGORY,
WORTHY & MOORE
1800 Frost Bank Tower
San Antonio, Texas 78205

By /s/ Richard B. Moore
RICHARD B. MOORE

[Certificate of Service Omitted in Printing]

MOTION OF DEFENDANT RIEGER/MEDI-SAVE PHARMACIES, INC. TO DISMISS, FEBRUARY 25, 1976

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

DEFENDANT, RIEGER-MEDI-SAVE PHARMACIES, INC.'S MOTION TO DISMISS

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COMES Defendant, RIEGER-MEDI-SAVE PHARMACIES, INC., and files its Motion to Dismiss, and for alternative relief, and would show the Court as follows:

I.

In support of this Motion, Defendant relies upon the pleadings on file and such depositions and affidavits which shall be timely filed in connection with the Motion.

II.

Defendant, RIEGER-MEDI-SAVE PHARMACIES, INC., hereby incorporates by reference, the Motion to Dismiss of Defendant Group Life and Health Insurance Company, together with the Brief filed in support of that Motion. Defendant RIEGER-MEDI-SAVE PHARMACIES, INC., asks the Court to consider all matters raised in that Motion and Brief in connection with this Motion.

Motion of Defendant Rieger/Medi-Save to Dismiss

III.

This Defendant moves the Court pursuant to Rule 12(b), to dismiss Plaintiff's Complaint for lack of jurisdiction over the subject matter and failure to state a claim upon which relief may be granted. Defendant alternatively asks the Court to treat this Motion as one for Partial Summary Judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and grant it Judgment on all Federal Anti-Trust Claims asserted by Plaintiffs.

As grounds for such relief this Defendant would show the Court that all matters raised by Plaintiff's Complaint (except the purely pendent count) have been exempted from the application of the Sherman and Clayton Acts (15 U.S.C. Sections 1 to 7; 15 U.S.C. Section 12, et seq.) by the application of the McCarran-Ferguson Act (15 U.S.C. Section 1011, et seq.). Since the McCarran-Ferguson Act removes the complained of activities from the Sherman and Clayton Acts, there is no statutory basis to support this action. The Original Complaint on its face [indicates] that there is no total diversity of citizenship between the parties.

As there is no original jurisdiction for this action, the remaining pendant counts should likewise be dismissed.

Defendant, RIEGER-MEDI-SAVE PHARMACIES, INC., moves the Court to Dismiss the Complaint or, alternatively, grant it a Summary Judgment on all Federal Anti-Trust Claims, and to dismiss the remaining pendant count.

Motion of Defendant Rieger/Medi-Save to Dismiss

Respectfully submitted,

GROCE, LOCKE & HEBDON

By: /s/ Charles R. Shaddox
CHARLES R. SHADDOX
2000 Frost Bank Tower
San Antonio, Texas 78205

Attorneys for Defendant,
Rieger-Medi-Save
Pharmacies, Inc.

[Certificate of Service Omitted in Printing]

STIPULATION OF PLAINTIFFS AND DEFENDANT RIEGER/MEDI-SAVE PHARMACIES, INC., MARCH 11, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

STIPULATION

It is agreed by and between Plaintiffs and Defendant, RIEGER-MEDI-SAVE PHARMACIES, INC., that the following facts are stipulated for the purpose of the Motions to Dismiss filed by Defendants, February 20, 1976.

I.

RIEGER-MEDI-SAVE PHARMACIES, INC., operates three (3) retail pharmacies located in Gibson's Discount Centers, in Bexar County, Texas.

II.

RIEGER-MEDI-SAVE PHARMACIES, INC., has not been licensed by the State of Texas to issue policies of insurance.

III.

RIEGER-MEDI-SAVE PHARMACIES, INC., does not operate an insurance agency licensed pursuant to V.A.T.S., Insurance Code, Art. 21.07, et seq., or 21.14, et seq., in Bexar County, Texas.

Stipulation of Rieger/Medi-Save Pharmacies, Inc.

STIPULATED this 9th day of March, 1976.

/s/ C. R. Shaddox
CHARLES R. SHADDOX
2000 Frost Bank Tower
San Antonio, Texas 78205

Attorney for Defendant,
Rieger-Medi-Save
Pharmacies, Inc.

By: /s/ Joel H. Pullen
JOEL H. PULLEN
1900 National Bank of
Commerce Building
San Antonio, Texas 78205

Attorney for Plaintiffs

STIPULATION OF PLAINTIFFS AND DEFENDANT THE SOMMERS DRUG STORES COMPANY, MARCH 11, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

STIPULATION

It is agreed by and between Plaintiffs and Defendant, THE SOMMERS DRUG STORES COMPANY, that the following facts are stipulated for the purpose of the Motions to Dismiss filed by Defendants, February 20, 1976.

I.

THE SOMMERS DRUG STORES COMPANY operates twenty-five (25) retail pharmacies in Bexar County, Texas.

II.

THE SOMMERS DRUG STORES COMPANY has not been licensed by the State of Texas to issue policies of insurance.

III.

THE SOMMERS DRUG STORES COMPANY does not operate an insurance agency licensed pursuant to V.A.T.S., Insurance Code, Art. 21.07, et seq., or 21.14, et seq., in Bexar County, Texas.

Stipulation of The Sommers Drug Stores Co.

STIPULATED this 10th day of March, 1976.

/s/ Richard B. Moore
RICHARD B. MOORE
1800 Frost Bank Tower
San Antonio, Texas 78205

Attorney for Defendant,
The Sommers Drug Stores
Company

By /s/ Joel H. Pullen
JOEL H. PULLEN
1900 National Bank of
Commerce Building
San Antonio, Texas 78205

Attorney for Plaintiffs

STIPULATION OF PLAINTIFFS AND DEFENDANT WALGREEN TEXAS CO., MARCH 11, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

STIPULATION

It is agreed by and between Plaintiffs and Defendant, WALGREEN TEXAS CO., that the following facts are stipulated for the purpose of the Motions to Dismiss filed by Defendants.

1.

Defendant, WALGREEN TEXAS CO., operates two (2) retail pharmacies located in San Antonio, Bexar County, Texas.

2.

Defendant, WALGREEN TEXAS CO., has not been licensed by the State of Texas to issue policies of insurance.

3.

Defendant, WALGREEN TEXAS CO., does not operate an insurance agency licensed pursuant to V.A.T.S., Insurance Code, Art. 21.07, et. seq., or 21.14, et. seq., in San Antonio, Bexar County, Texas.

Stipulation of Walgreen Texas Co.

STIPULATED this 11th day of March, 1976.

/s/ Wm. C. Church, Jr.
WM. C. CHURCH, JR.
8700 Tesoro Drive,
Suite #120
San Antonio, Texas 78217
Attorney for Defendant,
Walgreen Texas Co.

/s/ Joel H. Pullen
JOEL H. PULLEN
1900 National Bank of
Commerce Building
San Antonio, Texas 78205
Attorney for Plaintiffs

AFFIDAVIT OF BRUCE L. BUSBY IN SUPPORT OF DEFENDANT RIEGER/MEDI-SAVE PHARMACIES, INC.'S MOTION TO DISMISS, APRIL 19, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

AFFIDAVIT IN SUPPORT OF DEFENDANT RIEGER/MEDI-SAVE PHARMACIES, INC.'s MOTION TO DISMISS

BRUCE L. BUSBY, herein states and deposes as follows:

1. I am Bruce L. Busby, an adult resident of East Baton Rouge Parish, Louisiana, possessed of sound mind and I have never been convicted of a felony. I am competent to testify about the matters contained herein and this statement is based on my personal knowledge.

2. I hold the position of treasurer at Rieger/Medi-Save Pharmacies, Inc. (now Medi-Save Pharmacies, Inc.), which position I have held for more than six (6) years; I have also been vice-president for approximately one year. My responsibilities include supervision of all finance functions and accounting and control functions.

3. The only contracts known to me between any representative of Rieger/Medi-Save Pharmacies, Inc. and any representative of Group Life and Health Insurance Company are as follows: Rieger/Medi-Save Pharmacies, Inc. received copies of Group Life and Health Insurance Company's participating drug pharmacy agreement in the mail. Rieger/Medi-Save Pharmacies, Inc. then informed Group Life and Health Insurance Company that it wished to participate in the program and requested further in-

formation concerning the administrative details and processing claims. Each of the Rieger/Medi-Save Pharmacies, Inc. stores which were to participate executed a contract, as did Rieger/Medi-Save Pharmacies, Inc. Since the execution of the initial contracts, the only further contacts between Rieger/Medi-Save Pharmacies, Inc. and Group Life and Health Insurance Company have consisted solely of correspondence regarding claims between the individual stores and Group Life and Health Insurance Co. I do not know of any correspondence directly between Rieger/Medi-Save Pharmacies, Inc. and Group Life and Health Insurance Co. since execution of the initial contracts, other than correspondence attached as Exhibit A.

4. Rieger/Medi-Save Pharmacies, Inc. has never contacted any Walgreen's Texas stores or any Sommers Drug Stores with regard to Group Life and Health Insurance Company's participating drug pharmacy agreement, the setting or fixing of the retail price of prescription pharmaceuticals, or the foreclosure of any of the plaintiffs from any portion of the market for prescription pharmaceuticals.

5. At no time has Rieger/Medi-Save Pharmacies, Inc. or any of its directors, officers, employees, or agents taken any action designed to foreclose any of the plaintiffs in this cause from any portion of the market for prescription pharmaceuticals.

6. Rieger/Medi-Save Pharmacies, Inc., its officers, directors, employees and agents have never conspired with, consulted with, or even considered the actions of any of the defendants in this case in determining the retail price of prescription pharmaceuticals.

/s/ Bruce L. Busby
BRUCE L. BUSBY

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

SWORN TO AND SUBSCRIBED BEFORE ME, a notary public, on this the 15th day of April, 1976.

/s/ William D. Morgan
WILLIAM D. MORGAN,
Notary Public

My Commission expires at death.

[Certificate of Service Omitted in Printing]

AFFIDAVIT OF JOHN HANNAH, APRIL 19, 1976

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Caption Omitted in Printing]

AFFIDAVIT

JOHN HANNAH, by me being first duly sworn, deposes and says:

1. That he is a duly elected, qualified and acting Vice President of THE SOMMERS DRUG STORES COMPANY, (Sommers) a corporation duly organized under the laws of Maryland, and existing, and authorized to do business under and by virtue of the laws of the State of Texas, with its principal place of business in the City of San Antonio, Bexar County, Texas, and one of the Defendants in this cause.

2. That the relationship between Blue Shield and Sommers originated with a submission from Blue Shield in November, 1974, of a proposed form of Participating Pharmacy Agreement, which was considered by Sommers without discussion with any other person, firm, or entity, and the Sommers' decision to accept the Participating Pharmacy Agreement was made unilaterally by Sommers.

3. That at no time in making this decision whether to accept the offered Blue Shield contract was Sommers contacted by any representative of any other drug store defendant in this case.

4. That Sommers has never combined and conspired with any of the other Defendants in this cause, or with

any other person, firm or entity, to fix the retail sales price for pharmaceuticals or any other goods.

/s/ John Hannah
JOHN HANNAH

SWORN TO and SUBSCRIBED before me this 16th day of April, 1976.

/s/ Katharine Nellis
KATHARINE NELLIS
Notary Public in and for
Bexar County, Texas

OPINION OF UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, MAY 18, 1976

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Civil Action No. SA-75-CA-131

ROYAL DRUG COMPANY d/b/a Royal Pharmacy of Castle Hills and Disco Prescription Pharmacy, et al.

v.

GROUP LIFE AND HEALTH INSURANCE COMPANY a/k/a Blue Shield and/or Blue Cross-Blue Shield of Texas, et al.

June 23, 1976

Joel H. Pullen, Tinsman & Houser, Inc., San Antonio, Tex., for plaintiffs.

Keith E. Kaiser, Cox, Smith, Smith, Hale & Guenther, Inc., San Antonio, Tex., for Group Life and Health Ins. Co.

Charles R. Shaddox, Groce, Locke & Hebdon, San Antonio, Tex., for Rieger/Medi-Save Pharmacies, Inc.

William C. Church, Jr., Kampmann, Church & Burns, San Antonio, Tex., for Walgreen Texas Co.

Richard B. Moore, Gresham, Davis, Gregory, Worthy & Moore, San Antonio, Tex., for The Sommers Drug Stores Co.

MEMORANDUM OPINION

JOHN H. WOOD, JR., *District Judge.*

I.

Plaintiffs in this private civil antitrust action are eighteen independent pharmacy owners doing business in San

Antonio, Texas. Defendant Group Life and Health Insurance Company, also known as Blue Shield of Texas ("Blue Shield"), is an insurance company duly authorized by the Texas State Board of Insurance to transact the business of life, health and accident insurance within the State of Texas. The remaining three Defendants, Walgreen Texas Co. ("Walgreen"), The Sommers Drug Stores Company ("Sommers"), and Rieger/Medi-Save Pharmacies, Inc. ("Rieger") operate pharmacies in San Antonio, Texas.

Plaintiffs' suit is an attack upon Blue Shield's plan of operation under certain prescription drug insurance policies (the "Policy") which it issues. It is alleged that Defendants have violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by agreeing, combining and conspiring to fix the retail price of drugs and pharmaceuticals, and that the activities of Defendants have caused Blue Shield's insureds not to deal with certain of the Plaintiffs, thereby constituting a group boycott. Plaintiffs further allege that Defendants have violated the Texas antitrust laws, Tex. Bus. & Comm. Code Ann. § 15.01, *et seq.*, and that this Court should exercise pendent jurisdiction over those claims.

Each of the Defendants has separately moved to dismiss the Complaint for lack of jurisdiction over the subject matter and for failure to state a claim upon which relief can be granted. Defendants' motions are based upon the provisions of the McCarran-Ferguson Act, 15 U.S.C. § 1011, *et seq.* The motions also urge that in the absence of any valid cause of action based upon federal law, this Court should dismiss Plaintiffs' pendent claims.

Extensive discovery has been completed on the issue presently before the Court. The record includes numerous depositions, affidavits and documents, and all parties have had full opportunity to present all materials pertinent to

Defendants' motions. The Court has carefully reviewed and considered all of those materials, together with the briefs submitted by the parties and the oral argument of counsel.

The facts relevant to Defendants' motions are undisputed. The Policies provide prescription drug insurance coverage. The benefits provided under the Policies entitle Blue Shield's insureds to receive prescription drugs from any pharmacy (a "Participating Pharmacy") that has entered into a written contract (the "Pharmacy Agreement") with Blue Shield. The Policies further provide that the insured is required to pay no more for each prescription filled by a Participating Pharmacy than the amount of the drug deductible set forth in the Policy. The drug deductible is $2.00. Pursuant to the terms of the Pharmacy Agreement, a Participating Pharmacy agrees to dispense drugs to Blue Shield's insureds and to accept $2.00 as full payment from the insured for each dispensed drug. Further, Blue Shield agrees to reimburse the Participating Pharmacy for the acquisition cost of each drug dispensed to its insureds. Under the terms of the Policy, if the insured has his prescriptions filled by a pharmacy other than a Participating Pharmacy, he must pay the full price charged by the pharmacy and then apply to Blue Shield for reimbursement. Blue Shield will then reimburse the insured for 75% of the usual and customary charge for the drug, less the $2.00 deductible.

Walgreen, Sommers and Rieger each own Participating Pharmacies. Blue Shield is not engaged in selling or dispensing prescription drugs as a manufacturer, wholesaler or retailer, but is engaged solely in transacting the business of life, health and accident insurance.

In 1969, Blue Shield sought authority from the Texas State Board of Insurance to begin issuing prescription drug insurance coverage in the form described above. Article 3.42 of the Texas Insurance Code provides that all new policy forms proposed to be issued by life, health and accident insurance companies must be filed with the State Board of Insurance and approved prior to issuance or use by the company. In March, 1969, Blue Shield filed with the State Board of Insurance a proposed form of the Policy and the Pharmacy Agreement for approval prior to their issuance or use. The terms of the policy provided that Blue Shield's insureds were entitled to receive prescription drugs from Participating Pharmacies (called "participating providers" in the Policy). The Policy defined the term "participating provider" as a pharmacy who "has entered into a written contract [with Blue Shield] for the rendition of covered drugs for which benefits are provided by this [policy]." The Pharmacy Agreement was in the form described above.

In June, 1969, the Commissioner of Insurance issued a written order disapproving the issuance or use of the Policy. The Commissioner also notified the Texas Attorney General in writing of the action taken by the State Board and provided the Attorney General with copies of all pertinent documents. As a result of the disapproval order, Blue Shield did not issue or use the Policy or the Pharmacy Agreement.

Subsequent to the issuance of the disapproval order, the Policy and the Pharmacy Agreement remained under consideration by the State Board of Insurance. In September, 1969, pursuant to Article 3.42(e) of the Texas Insurance Code,* the Commissioner of Insurance issued another writ-

---

* "The Board of Insurance Commissioners may, by written order, exempt from the requirements of this Article for so long as it deems proper, any insurance document or form specified in such order to which in its opinion this Article may not practicably be applied, or the filing and approval of which are, in its opinion, not desirable or necessary for the protection of the public." Tex. Ins. Code Ann. art. 3.42(e).

ten order exempting the Policy from the approval requirements of Tex.Ins.Code Ann. art. 3.42.

The exemption order issued by the Commissioner of Insurance provided, in pertinent part:

> "Pursuant to the authority granted by Article 3.42, Paragraph (e) of the Texas Insurance Code, the Commissioner of Insurance hereby exempts from the requirements of said Article Policy Form CC-OHDS-2 submitted by Group Life and Health Insurance Company, Dallas, Texas; and this exemption shall remain effective pending further orders from the Commissioner of Insurance.
>
> "The exempt forms are described as drug service contracts, which confer upon the policy holder the right to obtain certain prescribed drugs at a cost fixed in the contract, the insurer having entered into participating agreements with dispensing pharmacies to supply the prescribed drugs to its policy holders."

It is clear that the exemption order exempted the Policy from nothing more than the requirement of approval by the State Board of Insurance. The former Deputy Commissioner of Insurance, who reviewed the Policy and the Pharmacy Agreement and then prepared the exemption order for the Commissioner's signature, testified on oral deposition that exempted policies are subject to all statutory requirements of the Texas Insurance Code and all regulatory requirements of the State Board of Insurance. He further testified that exempted policies and approved policies are subject to the same continuing regulation, control and supervision by the State Board. Other officials of the State Board of Insurance testified on oral deposition that exempted policies and approved policies are treated alike within the regulatory framework of the State Board of Insurance.

Further, the exemption order clearly shows that the Commissioner of Insurance considered the Pharmacy Agreement together with the Policy prior to issuing the exemption order. The exemption order authorized Blue Shield to issue and use the Policy in the State of Texas in the same manner as if it had been approved. Subsequent to the issuance of the exemption order, the Commissioner again advised the Texas Attorney General in writing of his action and forwarded a copy of the exemption order to the Attorney General. The exemption order has not been modified or rescinded.

Thereafter, Blue Shield made a statewide mailing to licensed pharmacies offering them the option of entering into the Pharmacy Agreement. Subsequent to the issuance of the exemption order, Blue Shield has issued the policy to various groups and entered into the Pharmacy Agreement with pharmacies throughout the State of Texas.

In 1974, Blue Shield entered into a health care agreement to provide insurance benefits to groups in Bexar County, Texas. Included in the proposed coverage was prescription drug insurance. In September, 1974, pursuant to Tex.Ins.Code Ann. art. 3.42, a Policy form virtually identical to the one submitted in 1969 was filed with the State Board of Insurance for approval prior to issuance or use in connection with the Bexar County program. Thereafter, in October, 1974, the Commissioner of Insurance issued a written order approving the Policy for issuance. Since receipt of the approval order, Blue Shield has issued the Policy to various groups in Bexar County, Texas. Blue Shield offered to virtually all licensed pharmacies in San Antonio, Texas, the opportunity of entering into a Pharmacy Agreement. Nine of the Plaintiffs accepted Blue Shield's offer and now operate Participating Pharmacies.

Plaintiffs agree that Blue Shield is engaged in the business of issuing prescription drug insurance coverage; however, they contend that the McCarran-Ferguson exemption is inapplicable in that Blue Shield has exceeded the business of insurance by entering into the Pharmacy Agreements, and that such agreements have nothing to do with the business of insurance. Plaintiffs further contend that regardless of whether or not Blue Shield is engaged in the business of insurance, Walgreen's, Sommers' and Rieger's participation in the Pharmacy Agreement is not the business of insurance.

For the reasons set forth herein, this Court does not agree with Plaintiffs' contentions. It is clear that the terms of the Policies which were reviewed by the State Board of Insurance and which it authorized Blue Shield to issue, expressly contemplate the execution of Pharmacy Agreements between Blue Shield and Participating Pharmacies. Moreover, the Pharmacy Agreement is so integrally related to the Policies that it would be impossible for Blue Shield to fulfill its contractual obligations to its insureds in the absence of such agreements.

The McCarran-Ferguson Act provides that ". . . the Sherman Act, . . . the Clayton Act, and the . . . Federal Trade Commission Act . . . shall be applicable to the business of insurance to the extent that such business is not regulated by State law." 15 U.S.C. § 1012(b). To the extent a state regulates such business by state law, the Sherman Act and the other federal antitrust laws are not applicable. The exemption is effective provided that two criteria are met: (1) that the "business of insurance" is involved, and (2) that there is state regulation of the business of insurance. The McCarran-Ferguson Act does not apply to acts of "boycott, coercion or intimidation." 15 U.S.C. § 1013(b).

II.

THE BUSINESS OF INSURANCE

In *SEC* v. *National Securities, Inc.*, 393 U.S. 453, 89 S.Ct. 564, 21 L.Ed.2d 668 (1969), the Supreme Court held that the "business of insurance" includes the relationship between the insurer and insured; the type of policy which could be issued, its reliability, interpretation and enforcement; and other activities of insurance companies which closely relate to their status as reliable insurers. *Id.* at 460, 89 S.Ct. 564. The Pharmacy Agreement directly pertains to the relationship between Blue Shield and its insureds. Moreover, the Pharmacy Agreement is a *direct* contractual relationship between the insurer and a provider of benefits, the result of which is simply the performance of the insurer's obligations owed to its insureds under the insurance contract and nothing more. A similar *direct* contractual relationship was examined in *Travelers Ins. Co.* v. *Blue Cross of West. Pennsylvania*, 481 F.2d 80 (3rd Cir. 1973) *cert. denied*, 414 U.S. 1093, 94 S.Ct. 724, 38 L.Ed.2d 550 (1973). In that case, the Third Circuit held that such contractual arrangements constituted the business of insurance, and thus, the relationship fell within the McCarran-Ferguson exemption. Direct contractual relationships between the insurer and a provider of benefits, as in this case, plainly relate to the "relationship between insurer and insured." The Pharmacy Agreement is based upon the provisions contained in the Policies relating to coverage and benefits, and directly concerns matters of interpretation and enforcement of the Policies. Clearly, the method adopted by Blue Shield of providing benefits under the Policies is closely connected to the relationship between Blue Shield and its insureds. The activities challenged by Plaintiffs in this action, including Blue Shield's contractual arrange-

ments with Participating Pharmacies, constitute the business of insurance within the meaning of *SEC* v. *National Securities, Inc., supra.*

A program substantially similar in concept and operation to the one at issue was previously determined by the Texas Attorney General to constitute the business of insurance in the State of Texas. In response to a request for an opinion from the Texas Commissioner of Insurance, the Attorney General analyzed a prescription drug program which contemplated the filling of subscriber's prescriptions by participating pharmacies. The plan of operation was based upon a contract between the company and participating pharmacies, whereby the pharmacy agreed to charge the subscriber no more than a certain percentage of the retail price of the prescription, and the company agreed to reimburse the pharmacy for the remainder. After thoroughly discussing the program the Attorney General concluded that ". . . the plan of operation intended to be followed by Prepaid Prescription Plan, Inc. would involve the doing of an insurance business in this state". Texas Attorney General's Opinion No. WW-1475 (Dec. 11, 1962).

This Court concludes that Blue Shield's plan of operation under the prescription drug insurance Policies, including the Pharmacy Agreements, constitutes the "business of insurance" within the meaning of the McCarran-Ferguson Act.

III.

STATE REGULATION

A. *General Regulation.*

The McCarran-Ferguson Act renders the federal antitrust laws inapplicable when state legislation generally proscribes, permits, or otherwise regulates the conduct in

question and authorizes enforcement through a scheme of administrative supervision. *Crawford* v. *American Title Ins. Co.*, 518 F.2d 217 (5th Cir. 1975); *FTC* v. *National Cas. Co.*, 357 U.S. 560, 78 S.Ct. 1260, 2 L.Ed.2d 1540 (1958); *Commander Leasing Co.* v. *Transamerica Title Ins. Co.*, 477 F.2d 77 (10th Cir. 1973).

The State of Texas has actively regulated the activities challenged in Plaintiffs' Complaint since the inception of Blue Shield's prescription drug insurance program. The requirement of Article 3.42 of the Texas Insurance Code that all policy forms must be filed for review and approval by the State Board of Insurance prior to issuance or use by the insurer was fully satisfied. Active regulation of the prescription drug insurance program is further shown by the written orders issued by the Commissioner of Insurance and by the fact that the Texas Attorney General was also kept fully advised of Blue Shield's prescription drug insurance program.

B. *Regulation Of Unfair Methods Of Competition In The Business Of Insurance.*

Not only is there a scheme of general state regulation of the business of insurance involved in this action, but the Texas Insurance Code contains specific provisions applicable to the conduct alleged in Plaintiffs' Complaint. In 1951, the Texas Legislature enacted Tex.Ins.Code Ann. art. 21.21, which expressly regulates unfair competition and unfair practices in the business of insurance. The declaration of purpose of the Act states:

> "The purpose of this Act is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress [the McCarran-Ferguson Act], by defining,

> or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined." Tex.Ins.Code Ann. art. 21.21 § 1.

Article 21.21 specifically prohibits "*any* trade practice which is defined in [the] Act as, or determined pursuant to [the] Act to be, an unfair method of competition or unfair or deceptive act or practice in the business of insurance." Tex.Ins.Code Ann. art. 21.21 § 3. (Emphasis added) That statute grants specific administrative and supervisory powers to the State Board of Insurance, including the power to issue cease and desist orders. Penalties are provided for violation of such orders. Without doubt, the phrase "any" unfair method of competition encompasses the conduct challenged in this action. Furthermore, the oral deposition testimony establishes that the State Board of Insurance reviews all policy forms submitted to it with a view toward insuring compliance with Article 21.21, and that approved, as well as exempted policies, are subject to its provisions. Article 21.21 was specifically intended by its drafters to respond to the invitation of the McCarran-Ferguson Act and to withdraw from federal control the very conduct charged by Plaintiffs in this action, and to place such conduct under state control. Article 21.21 constitutes sufficient state regulation to activate the exemption provided in the McCarran-Ferguson Act. *Crawford* v. *American Title Ins. Co.*, 518 F.2d 217 (5th Cir. 1975); *Dexter* v. *Equitable Life Assurance Soc'y of the U. S.*, 527 F.2d 233 (2nd Cir. 1975).

C. *The Texas Antitrust Laws.*

In addition to the comprehensive regulation of Blue Shield's activities provided by the Texas Insurance Code,

anticompetitive practices in the business of insurance are also regulated by the Texas antitrust laws. The Texas antitrust laws declare categorically that "[e]very monopoly, trust, and conspiracy in restraint of trade . . . is illegal and prohibited." Tex.Bus. & Comm. Code Ann. § 15.04(a). Further, the Texas antitrust laws specifically prohibit conspiracies of the type alleged in Plaintiff's Complaint. Tex.Bus. & Comm.Code Ann. § 15.02. It should be noted that Plaintiffs have included in their Complaint a pendent claim under the Texas antitrust laws based upon the same facts that Plaintiffs allege give rise to a violation of the federal antitrust laws.

The existence of a state antitrust law proscribing the conduct complained of constitutes "regulation" within the meaning of the McCarran-Ferguson Act sufficient to displace the federal antitrust laws. *Meicler* v. *Aetna Cas. and Sur. Co.*, 506 F.2d 732 (5th Cir. 1975); *Sanborn* v. *Palm*, 336 F.Supp. 222 (S.D.Tex.1971); *Transnational Ins. Co.* v. *Rosenlund*, 261 F.Supp. 12 (D.Ore.1966); *California League of Ind. Ins. Producers* v. *Aetna Cas. & Sur. Co.*, 175 F.Supp. 857 (N.D.Cal.1959).

Therefore, in addition to active regulation under the Texas Insurance Code, the existence of state antitrust statutes forbidding the conduct alleged by Plaintiffs constitutes state regulation of the business of insurance sufficient to bar application of the federal antitrust laws.

IV.

THE BOYCOTT EXCEPTION TO THE MCCARRAN-FERGUSON ACT IS INAPPLICABLE

As in *Meicler* v. *Aetna Cas. and Sur. Co.*, *supra*, Plaintiffs attempt to avoid the effect of the McCarran-Ferguson exemption by relying on the Section 1013(b) boycott exception. Plaintiffs' reliance on this exception is mis-

placed. The courts have narrowly construed Section 1013 (b), which provides:

> "Nothing contained in this chapter shall render said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion or intimidation." 15 U.S.C. § 1013(b).

The sole purpose of this exception is to protect against the issuance of black-lists naming insurance companies or agents, rather than the conduct alleged by Plaintiffs in this action.

In *Meicler*, the Court stated:

> "As the district court noted, the legislative history indicates that the boycott exception was designed to reach insurance company 'black-lists' rather than refusal to sell to a particular segment of the public at other than a specified price. (Citations omitted) Appellants' broad construction of Section 1013(b) would emasculate the antitrust exemption contained in Section 1012(b) of the McCarran-Ferguson Act. We affirm the district court's holding that the boycott exception does not apply." 506 F.2d at 734.

This case does not involve black-listing and the boycott exception is inapplicable. *Addrisi* v. *Equitable Life Ins. Assurance Soc'y of the U. S.*, 503 F.2d 725 (9th Cir. 1974); *Proctor* v. *State Farm Mut. Auto Ins. Co.*, 406 F. Supp. 27 (D.D.C.1975); *Mitgang* v. *Western Title Ins. Co.*, Trade Reg.Rep. (1974-2 trade cases) ¶ 75,322 at 98,024 (N.D.Cal. October 16, 1974); *Transnational Ins. Co.* v. *Rosenlund*, 261 F.Supp. 12 (D.Ore.1966).

V.

Application of the McCarran-Ferguson Act to the Non-Insurance Company Defendants

Plaintiffs contend that Walgreen, Sommers and Rieger are not entitled to the protection afforded by the McCarran-Ferguson Act because they are not insurance companies. The exemption provided in the Act is not strictly limited to insurance companies. As shown herein, it is the "business of insurance" with which the Act is concerned.

Recent cases have allowed the exemption even though the challenged activities involved parties other than insurance companies. In *Travelers Ins. Co.* v. *Blue Cross of West. Pennsylvania*, 481 F.2d 80 (1973), the Court applied the exemption to contracts between the insurance company and hospitals. In *Schwartz* v. *Commonwealth Land Title Ins. Co.*, 374 F. Supp. 564 (E.D.Pa.1974), the exemption was applied to a fee charged to sellers of real estate by title insurance companies and agents.

It is clear that it is the nature of the conduct involved which must be looked at in order to determine whether or not the exemption should be applied. In the instant case, Walgreen, Sommers and Rieger, by having contractually agreed with Blue Shield to provide the benefits set out in the Policy, have become an integral part of the overall scheme of insurance coverage which is regulated by state law. Such integration of the providers of benefits under the Policies into the overall scheme places their actions under the Pharmacy Agreements within the "business of insurance", and they are therefore entitled to the protection afforded by the McCarran-Ferguson Act for it is clear that one cannot be brought within the web of potential liability under the Federal Antitrust laws for

participation in the complained of activity if such activity is, as in the instant case, exempt by operation of the McCarran-Ferguson Act.

VI.

Plaintiffs' Pendent Claims

As shown above, the complained of activities are exempt from the Federal Antitrust laws because of the McCarran-Ferguson Act. It is clear from the pleadings on file that jurisdiction over this action does not exist by reason of diversity of citizenship. If the Federal claims are dismissed prior to trial, it is within the ambit of this Court's discretion to decline to continue to exercise jurisdiction over the pendent state claims. No unusual circumstances are present in this case which would require the Court to retain jurisdiction over the pendent claims. *United Mine Workers of America* v. *Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966); *Lazier* v. *Weitzenfeld*, 505 F.2d 896 (5th Cir. 1975); *Kavit* v. *A. L. Stamm & Co.*, 491 F.2d 1176 (2nd Cir. 1974).

VII.

Conclusion

For the reasons set forth above, this Court concludes that the complained of activities constitute the "business of insurance". This Court further concludes that the State of Texas has regulated and is actively and effectively regulating such business of insurance within the meaning of the McCarran-Ferguson Act, and the Federal Antitrust laws are thereby rendered inapplicable. Accordingly, Defendants' motions will be granted. As shown herein, this Court has considered matters outside the

pleadings in arriving at its decision. In doing so, the essentials necessary to support the exemption have been found to exist. Therefore, it is appropriate that Defendants' motions shall be treated as Motions for Summary Judgment and disposed of as provided in Rule 56, Federal Rules of Civil Procedure. The foregoing Memorandum Opinion constitutes the Court's Findings of Fact and Conclusions of Law.

An Order consistent with the foregoing will be entered.

FINAL ORDER AND JUDGMENT OF UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, MAY 18, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Civil Action No. SA-75-CA-131

ROYAL DRUG COMPANY, INC., ET AL.

v.

GROUP LIFE AND HEALTH INSURANCE COMPANY, ET AL.

ORDER

On the 18th day of May, 1976, this Court filed its Memorandum Opinion which included its Findings of Fact and Conclusions of Law in connection with the above-captioned action. Consistent with such Memorandum Opinion and the Findings of Fact and Conclusions of Law contained therein, it is hereby ORDERED, ADJUDGED and DECREED that judgment is rendered for and in behalf of Defendants Group Life and Health Insurance Company, also known as Blue Shield of Texas, Walgreen Texas Co., The Sommers Drug Stores Company and Rieger/Medi-Save Pharmacies, Inc., with respect to Plaintiffs' claims under the federal antitrust laws.

It is further ORDERED, ADJUDGED and DECREED that Plaintiffs' claims alleged to arise under the Texas antitrust laws be, and they are hereby dismissed without prejudice.

It is further ORDERED that all costs of this suit are taxed against Plaintiffs.

SIGNED and ENTERED this 18th day of May, 1976.

/s/ John H. Wood, Jr.
JOHN H. WOOD, JR.
United States District Judge

OPINION OF UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, AUGUST 8, 1977

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 76-2746

ROYAL DRUG COMPANY, INC., d/b/a Royal Pharmacy of Castle Hills and Disco Prescription Pharmacy, et al.,
Plaintiffs-Appellants,

v.

GROUP LIFE AND HEALTH INS. CO., a/k/a Blue Shield and/or Blue Cross-Blue Shield of Texas, et al.,
Defendants-Appellees.

Aug. 8, 1977

Rehearing and Rehearing En Banc

Denied Oct. 27, 1977

* * * *

Joel H. Pullen, Stephen F. Lazor, San Antonio, Tex., for plaintiffs-appellants.

Keith E. Kaiser, R. Laurence Macon, J. Burleson Smith, San Antonio, Tex., for Group Life & Health.

William C. Church, Jr., San Antonio, Tex., for Walgreen Texas Co.

Richard B. Moore, San Antonio, Tex., for Sommers Drug Stores Co.

Charles R. Shaddox, San Antonio, Tex., for Rieger-Medi-Save Pharmacies, Inc.

Appeal from the United States District Court for the Western District of Texas.

Before GOLDBERG and HILL, Circuit Judges, and KERR,* District Judge.

JAMES C. HILL, Circuit Judge:

The plaintiffs in this civil antitrust action are eighteen independent pharmacy owners doing business in San Antonio, Texas.[1] Blue Shield is a Texas insurance company authorized by the State Board of Insurance of Texas to sell life, health and accident insurance. Three other defendants, Walgreen Texas Company, The Sommers Drug Stores Company and Rieger Medi-Save Pharmacies, Inc., also operate pharmacies in San Antonio, Texas.

The plaintiffs contend that the defendants have violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by agreeing, combining and conspiring to fix the retail price of drugs and pharmaceuticals, and that the activities of the defendants have caused Blue Shield's insureds not to deal with certain of the plaintiffs, thereby constituting an unlawful group boycott. Plaintiffs also allege violations of Texas antitrust law over which the district court took pendent jurisdiction. The defendants affirmatively alleged in their answers that pursuant to the provisions of the McCarran-Ferguson Act, 15 U.S.C. § 1011, *et seq.*, ("McCarran Act") the complaint failed to state a claim upon which relief could be granted and that the district court lacked subject matter jurisdiction. On the basis of the McCarran Act, each defendant moved to dismiss the complaint pursuant to Rule 12(b), F.R.Civ.P. The defendants also moved that the court treat their motions as motions for

---

* Senior District Judge for the District of Wyoming, sitting by designation.

[1] Since the parties have been referred to in the briefs as plaintiffs and defendants, as they were in the district court, they will be so designated in this opinion. The defendant Group Life & Health Insurance Company will be referred to herein as Blue Shield.

summary judgment pursuant to Rule 56, F.R.Civ.P. Defendants further moved the court to dismiss the claims based upon state law if the court found there was not a proper cause of action based upon federal law. The district court held that: (1) the conduct complained of by the plaintiffs constitutes the business of insurance; (2) the State of Texas has regulated and is actively regulating such business of insurance within the meaning of the McCarran Act; (3) that the boycott exception to the McCarran Act is inapplicable to the instant case; and (4) that the federal antitrust laws are, therefore, rendered inapplicable. We reverse.

I. *The Facts.*

Plaintiffs are challenging a plan of operation under which Blue Shield issues certain prescription drug insurance policies which entitled Blue Shield's insureds to purchase drugs from any pharmacy. If the pharmacy selected by the policyholder has entered into a written contract ("Pharmacy Agreement") with Blue Shield, the insured is required to pay only two dollars ($2.00), the amount of the drug deductible set forth in the policy. On the other hand, if the insured has his prescription filled by a pharmacy other than a Participating Pharmacy, he is required to pay the full price charged by the pharmacy as well as the $2.00 deductible, and then to apply to Blue Shield for reimbursement. Blue Shield will then reimburse the insured only for 75 percent of the usual and customary charge for the drug, less the $2.00 deductible.[2]

In 1969, Blue Shield sought approval from the Texas State Board of Insurance to begin issuing prescription drug insurance coverage. The Commissioner, however, dis-

---

[2] The usual and customary charge is established by Blue Shield and is determined by reference to its compilation of such charges.

approved the issuance or use of such a policy. The policy remained under the consideration of the Commissioner and in September, 1969, the Commissioner issued an order exempting the policy from the approval requirements of Texas law. The defendants contend that there is uncontradicted evidence showing that an exemption order exempts the policy from nothing more than the requirement of approval by the State Board of Insurance, and that exempted policies, as well as approved policies, are subject to all statutory requirements of the Texas Insurance Code and the continuing regulation, control and supervision of the State Board of Insurance.

When the Commissioner issued his orders concerning the plan, disapproving it in the first instance, and then exempting the plan, he advised the Texas Attorney General in writing of his actions on each occasion. After receiving the exemption order, Blue Shield made a statewide mailing to licensed pharmacies offering them the privilege of entering into the Pharmacy Agreement. As a result, Blue Shield has issued the policy to various groups and has entered into the Pharmacy Agreement with pharmacies throughout the State of Texas.

In 1974, Blue Shield entered into a health care agreement, which included a prescription drug insurance, to provide insurance benefits to groups in Bexar County, Texas. In order to implement this agreement, in September, 1974, a policy form virtually identical to the one submitted in 1969 was filed with the State Board of Insurance for approval prior to its issuance or use. This policy was approved in October, 1974. Subsequently, Blue Shield has issued the policy to various groups in Bexar County and has offered to virtually all licensed pharmacies in San Antonio the opportunity of entering into the Pharmacy Agreement. Nine of the plaintiffs in this case accepted Blue Shield's offer and now operate Participating Pharmacies. In recent years, the number of pharmaceutical sales covered by this policy have risen dramatically. For example, between early 1972 and October, 1975, there was a 3,100 percent increase in the number of pharmaceutical claims processed by Blue Shield under the policy. In October, 1975, Blue Shield was handling these claims at the rate of approximately 31,000 claims per month as compared with only 1,000 claims per month in early 1972.

For each sale made under the plan, a Participating Pharmacy is limited to a $2.00 markup, which is known as a "professional dispensing fee," irrespective of its actual acquision cost for a particular drug. The plaintiffs note that, with respect to highly expensive drugs, the Pharmacy Agreement can result in a markup of no more than two percent, which will not even cover the interest on its investment inventory.

II. *Summary of Contentions of Appeal.*

The plaintiffs argue that the retail sales price, as fixed in the Pharmacy Agreement between Blue Shield and the defendant pharmacy chains, has been set at a level below that at which small independent pharmacies can profitably conduct business. They claim that only large, high volume chains that sell many items in addition to drugs can afford to operate pursuant to the Pharmacy Agreement. They also contend that the Agreement fixes the retail price of drugs at a level which eliminates the only effective means by which small independent pharmacies can compete with the large chains—the provision of services. They argue that, since signatories of the Pharmacy Agreement are limited to the same retail sales price whether they provide home deliveries, twenty-four hour service, or no service at all, the ability of the independents to compete is effectively destroyed. The plaintiffs contend that Blue Shield's plan of operation not only

encompasses the fixing of prices in the defendant pharmacy chains, but it extends to the pharmaceutical industry as a whole. They contend that small independent pharmacies are given the choice of either signing the price fixing agreement or being forced out of business.

The plaintiffs also argue that there are two types of coercion of Blue Shield's subscribers inherent in the plan. First, the subscriber receives markedly reduced benefits if he patronizes a pharmacy that refuses to sign the price-fixing agreement. Although he would pay only the $2.00 drug deductible for each prescription filled by a participating pharmacy, he would ultimately pay an amount representing 25 percent of a reasonable charge for the drug, in addition to the $2.00 drug deductible, for each prescription filled by a nonsigning pharmacy. The plaintiffs also point out that the differential in benefits between participating and nonparticipating pharmacies is intended to coerce Blue Shield's policy holders not to patronize nonsigning pharmacies *in Texas* and thereby to coerce such pharmacies to sign the price-fixing agreement. This allegation is based on the policy itself, which provides that the subscriber will be reimbursed 100 per cent of a reasonable charge for the drug, less the $2.00 drug deductible, when he patronizes a nonsigning pharmacy outside the State of Texas.

The plaintiffs also contend that there is a second and more subtle step to the coercion. If a pharmacy signs the Pharmacy Agreement and agrees to charge only the stipulated amount for drugs sold to Blue Shield Subscribers, it will be reimbursed directly by Blue Shield in the amount of the acquisition cost, and the subscriber will be obligated to pay the pharmacy at the time of purchase only the $2.00 drug deductible. If the pharmacy has refused to sign the Agreement, however, Blue Shield will not deal with the pharmacy directly, and the subscriber

must pay the entire retail sales price at the time of purchase, in addition to the $2.00 fee. After paying the entire sales price at the time of purchase, he must file a claim with Blue Shield seeking reimbursement. Thus, an insured has the additional burden of filing a claim for reimbursement, and he must accept reduced benefits in order to patronize the drug store of his choice.

Having made the above claims, the plaintiffs are immediately confronted with defendant's argument that its activities are exempt from the antitrust laws by virtue of the McCarran Act. The McCarran-Ferguson Act provides that the Sherman Act, the Clayton Act and the Federal Trade Commission Act shall be applicable to the business of insurance only "to the extent that such business is not regulated by state law."

Disputing the applicablility of the McCarran Act exemption, the plaintiffs contend that a three-step analysis is necessary to determine whether an insurance company's challenged activities fall within the Act's exemption. First, they contend, the court must determine whether the challenged activities constitute the "business of insurance." Second, it must determine whether the activities in question are regulated by state law. Third, the court must determine the presence or absence of boycott, coercion, or intimidation.[3] The latter requirement derives from Section 3(b) of the McCarran Act, which states as follows: "Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate or act of boy-

[3] A negative finding for the first question obviates the necessity for a determination with respect to the second and third steps, and precludes application of the McCarran Act. *SEC* v. *Nat'l Securities, Inc.*, 393 U.S. 453, 89 S.Ct. 564, 21 L.Ed.2d 668 (1969); *American General Insurance Co.* v. *FTC*, 359 F.Supp. 887 (S.D. Tex. 1973), *aff'd.*, 496 F.2d 197 (5th Cir. 1974).

cott, coercion or intimidation." 15 U.S.C. § 1013(b) (1970).

III. *Do the Defendants' Activities Constitute the Business of Insurance?*

The stepping off point of our analysis is the general principle that statutory exceptions to the antitrust laws "are to be strictly construed." *Abbott Labs* v. *Portland Retail Druggists Ass'n, Inc.*, 425 U.S. 1, 96 S.Ct. 1305, 47 L.Ed.2d 537 (1976); *FMC* v. *Seatrain Lines, Inc.*, 411 U.S. 726, 93 S.Ct. 1773, 36 L.Ed.2d 620 (1973). The notion that "our cases have repeatedly established . . . a *heavy presumption against* implicit [antitrust] exemptions" was recently reaffirmed in *Abbott Labs, supra.*[4] Moreover, it is clear that merely because challenged conduct has been engaged in by an insurance company does not dictate its characterization as the "business of insurance" under the McCarran Act. *SEC* v. *National Securities, Inc.*, 393 U.S. 453, 89 S.Ct. 564, 21 L.Ed.2d 668 (1969). The question presented under the McCarran Act, therefore, "is whether the activities complained of, *even though they may be actions taken by an insurance company*, are part of the 'business of insurance' which Congress sought to remove from federal regulation." *Fry* v. *John Hancock Mutual Life Ins. Co.*, 355 F.Supp. 1151, 1153 (N.D.Tex.1973) (emphasis added).

In *National Securities* the Supreme Court held that the "business of insurance" included (1) "the relationship between insurer and insured," (2) "the type of policy which could be issued, its reliability, interpretation and enforcement;" (3) "other activities which relate . . . to

[4] Relying on this general principle, plaintiffs argue that if the challenged activities do not clearly constitute the business of insurance, they fall outside the McCarran Act's protective umbrella and are subject to the full force and effect of the antitrust laws.

their status as reliable insurers." Relying on the first of these definitions, the plaintiffs note that the McCarran Act's focus is on the relationship between the insurer and the insured. The plaintiffs argue that a crucial determination is the question how closely the challenged activity concerns the relationship between the insurance company and the policyholder. The activities challenged herein, according to the plaintiffs, relate primarily to relationships other than that between the insurer and its policyholders and therefore are not peculiar to the insurance industry. The plaintiffs concede that there may be effects on policyholders resulting from the Pharmacy Agreement, but they minimize these as peripheral and secondary to the effects on the relationship between competing pharmacies and between such pharmacies and their customers.

The defendants contend, and the district court found, that the plan of operation followed by Blue Shield, including the Pharmacy Agreement, relates directly to its status as a reliable insurer. We cannot agree. It is beyond peradventure that every action taken by an insurance company to enhance its status as a "reliable insurer" does not necessarily constitute the "business of insurance" within the meaning of the McCarran Act. Moreover, an agreement which does not otherwise constitute the business of insurance is not automatically embraced within the protection of the McCarran Act simply because it benefits policyholders either directly, or indirectly by strengthening the financial condition of the insurer.

Defendants allege that the contractual arrangements between Blue Shield and Participating Pharmacies require nothing more than the performance of obligations owed to Blue Shield's insureds under the drug insurance policies. In concluding that "[t]he Pharmacy Agreement directly pertains to the relationship between Blue Shield and its insureds" the district court held that the Phar-

macy Agreement "is simply the performance of the insurer's obligations owed to its insureds under the insurance contract and nothing more." Despite these characterizations of the contractual arrangement, we find that the agreeements between Blue Shield and Participating Pharmacies do not require Blue Shield to fix prices or to produce other anticompetitive effects in the pharmaceutical industry. Blue Shield's sole obligation is to see that the insured receives prescription drugs and "shall be required to pay no more than the drug deductible for each of such covered drugs." It is unnecessary for Blue Shield to agree with pharmacies to fix retail sales prices in the pharmaceutical industry. Blue Shield's policyholders are basically unconcerned with the contract between the insurer and the Participating Pharmacy. They are obligated to pay a Participating Pharmacy two dollars ($2.00) for a prescription regardless of the presence or absence of a price fixing arrangement. Thus, by minimizing costs and maximizing profits, the Participating Pharmacy Agreements inure principally to the benefit of Blue Shield.

The plaintiffs attempt to illustrate by example that the relationship primarily affected by the Pharmacy Agreement and the alleged coercion is that between competing pharmacies and not the relationship between insurer and insured. If the challenged activities in this case are held to constitute the business of insurance, they contend, then automobile insurers will be able to utilize Participating Repair Shop Agreements and coercion to fix prices for parts and labor in the automobile industry. Similarly, they contend that fire insurance companies would be able to execute Participating Construction Company Agreements and thereby combine and conspire with large construction companies to set prices for the repair and rebuilding of homes or buildings damaged by fire. The plaintiffs contend that Congress never intended that the

McCarran Act be utilized to shield such activities from application of the federal antitrust laws. They note that Congress, in enacting the McCarran Act, may have condoned state supervised rate setting, but Congress was opposed to private price fixing and did not intend that such activity be shielded from federal scrutiny.

The defendants argue that the Pharmacy Agreement is so inextricably intertwined with the policies that it would be impossible for Blue Shield to fulfill its contractual obligations to its insureds in the absence of such agreements with the pharmacies. The defendants also dispute plaintiffs' arguments that if Blue Shield's activities are permitted, automobile insurers will utilize Participating Repair Shops and fire insurance carriers will enter into Participating Construction Company Agreements. The defendants contend that the types of insurance referred to by the plaintiffs are not at issue here and such types of insurance are regulated by the provisions of the Texas Insurance Code which are not similar to the ones involved in this case. They also contend that Blue Shield was statutorily required to submit the policies to the state board prior to issuance or use and that the Commissioner authorized the use of the policy and Pharmacy Agreement. Finally, they contend that the activities suggested in the hypothetical examples would require careful examination of the existing laws and regulatory devices relating to automobile insurance and fire insurance. In short, they contend that these hypotheticals are nothing more than speculation and conjecture.

We conclude that Blue Shield is no more obligated to fix the retail prices of pharmaceuticals than an automobile insurer is obligated to its insureds having deductible policies to fix the prices charged for parts and labor. Just as the automobile insurer is obligated to pay the cost of repair, whatever it might be, over and above the appli-

cable policy deductible, Blue Shield is obligated to pay the cost of prescription drugs over and above the two dollar ($2.00) drug deductible. Even though an automobile insurer might be able to guarantee by contract that repairs are done for its customers on a "cost" basis, thereby achieving increased profits or reduced rates, such agreements do not thereby become immune from antitrust scrutiny. *Contra, Proctor* v. *State Farm Mutual Insurance Co.*, 406 F.Supp. 27 (D.D.C.1975).

The plaintiffs next contend that the Pharmacy Agreement produces results far beyond the simple performance of Blue Shield's responsibilities owed to its insureds under The Prescription Drug Insurance Policy. Blue Shield itself may have recognized that the Pharmacy Agreement goes beyond its obligations under the prescription plan. The plaintiffs introduced into evidence a letter between two Blue Shield executives which indicated a concern over antitrust problems and suggested that the company camouflage the price fixing arrangement as a "mass accounting agreement." The evidence introduced in the trial court stated as follows: "I think it would be best to draft the contract so that the Insurance Board would require filing of the mass accounting agreement [Pharmacy Agreement] to strengthen your base on anti-trust. Drafting problems will get sticky here, but let's pass on that for now." The plaintiffs contend that this letter carries the Blue Shield plan far beyond the protection of the McCarran Act. They contend that Congress did not contemplate or intend that the McCarran Act should shield from antitrust scrutiny any insurance company's efforts to control the magnitude of its policyholder's claims through the elimination of price and other forms of competition in the industries providing goods and services covered by the insurance policy. Since these activities are not regulated by the State, they contend that the McCarran Act exemption does not apply.

We find that the Pharmacy Agreement goes beyond Blue Shield's obligation as an insurer and places the firm in the business of providing products and services. Blue Shield has agreed to provide protection against the risk that a policyholder will require pharmaceuticals. In order to meet that obligation, Blue Shield is not required to guarantee the provision of services on a "cost-plus" basis or any other basis which might be more economical than the retail purchase of such products. That Blue Shield may wish to protect itself and its customers from rising costs in the pharmaceutical industry does not transform the Pharmacy Agreement into the business of insurance. In fact, the best way for the firm to protect itself from rising costs is to establish and periodically adjust its rate structure to reflect the impact of inflation. Such measures, which are by no means foreign to the insurance business, involve far less intrusion into the pharmaceutical industry and, consequently, avert the potentially anticompetitive effects alleged here.

The plaintiffs next attempt to come to grips with *Travelers Insurance Company* v. *Blue Cross*, 481 E.2d 80 (3rd Cir.), *cert. denied*, 414 U.S. 1093, 94 S.Ct. 724, 38 L.Ed. 2d 550 (1973), by arguing that the McCarran Act does not apply *ipso facto* to every direct contractual relationship between an insurance company and a provider of benefits. In *Travelers*, the Third Circuit held that the contractual arrangements consummated between Blue Cross and various hospitals for the furnishing of services under insurance policies constituted the business of insurance and, thus, the relationship fell within the McCarran Act exemption. There, as here, the relationship was a direct contractual relationship the result of which was the performance of obligations owed to the insured by the insurer on an economically favorable basis. The plaintiffs have attempted to distinguish *Travelers* by

arguing that the Third Circuit was merely approving the actions of the Insurance Commissioner of Pennsylvania who was exerting pressure on the large insurance companies to exercise their power over hospitals to reduce hospital costs. This interpretation, with which we agree was adopted in *Doctors, Inc.* v. *Blue Cross*, 431 F.Supp. 5 (E.D.Pa. 1975), *aff'd per curiam*, 557 F.2d 1001 (3d Cir. 1976).[5] Moreover, the *Travelers* decision was based in large measure on the Pennsylvania legislature's control over rates charged by nonprofit hospitals. That regulation was undertaken pursuant to a statutorily created interrelationship between the rates charged by nonprofit health insurers and nonprofit hospitals, which interrelationship was to be regulated by the Pennsylvania Insurance Department. The plaintiffs note that the Texas Legislature has not chosen indirectly or directly to control the rates charged by pharmacies either by directing and controlling contracts between insurers and pharmacies or by creating an interrelationship between the rates charged by pharmacies and those charged by insurers. Since *Travelers* held simply that the contract between a nonprofit health insurer and a nonprofit hospital was shielded by the McCarran Act from attack, *Travelers* carries little precedential value in this appeal.

---

[5] The court indicated the narrow scope of *Travelers* as follows:

> It is therefore readily apparent from the reading of the *Travelers* case that the Third Circuit is approving the *actions of the Insurance Commissioner of Pennsylvania when he exerts pressure* on the large insurance companies to get them to exercise their power over hospitals to force the hospitals to cut costs wherever possible. This is exactly what Blue Cross was doing in our case at the bequest of the Insurance Commissioner. Therefore, since the McCarran-Ferguson exemption was applicable in Travelers . . ., I hold today that the McCarran-Ferguson exemption is applicable in *Doctors, Inc.* . . . *Doctors, Inc. vs. Blue Cross*, 431 F.Supp. 5, 10 (E.D.Pa. 1975), *aff'd* 557 F.2d 1001 (3d Cir. 1976) (emphasis added).

Rather, the instant case is more nearly akin to *Battle* v. *Liberty Nat'l Life Ins. Co.*, 493 F.2d 39 (5th Cir. 1974), *cert. denied*, 419 U.S. 1110, 95 S.Ct. 784, 42 L. Ed.2d 807 (1975). In *Battle* several funeral homes and directors brought suit against an insurer, which issued burial policies, and the insurer's wholly owned subsidiary which supplied merchandise and services required by the insurer's policies. Although this court found coercion with respect to the insurer's discrimination in benefits, the court felt that the facts were inadequately developed to make a conclusive determination on the McCarran Act issue. Nonetheless, the court stated as follows: "[I]t might be plausibly argued that these facts do not constitute the business of insurance as contemplated by the McCarran Act and thus do not fall within its exemption."[6] The court noted that the obligations under the insurer's arrangement might be related to the business of insurance, but the obligations were so remotely related as to be subject to the antitrust laws. Relying on *Battle*, the plaintiffs argue that the defendants' activities challenged herein are not peculiar to the insurance industry and are not the business of insurance. They argue that by providing markedly decreased benefits to those subscribers who patronize a nonparticipating pharmacy, Blue Shield intentionally and overtly coerces its subscribers to boycott these pharmacies. Not only does this

---

[6] The Court stated:

> It appears that, since the insurance contract confers far more benefits upon the policyholder if he uses an authorized funeral home, the policyholder is subtly coerced into dealing only with the authorized home. The imposition of this restraint would effectively foreclose the unauthorized funeral director's access to a substantial portion of the market. 493 F.2d at 44-45.

The court held that these facts "if established, would tend to support a finding of unreasonable restraint of trade."

493 F.2d at 44.

boycott operate to coerce the nonsigning pharmacies to participate in the plan, it also forecloses nonsigning pharmacies from a significant portion of the market and secures for participating pharmacies the sales of prescription drugs required by Blue Shield's claimants. Since this activity is not peculiar to the insurance industry, plaintiffs argue that it does not constitute the business of insurance. As in *Battle*, the contractual agreements here under review are somewhat related to the business of insurance. The relationship, however, is so attenuated that it must be subject to the antitrust laws. As the plaintiffs have so well articulated, "it is not the office of the insurance industry to set the prices in the various sectors of our economy so that insurers will enjoy an added measure of control over the magnitude of individual claims."

The plaintiffs next take issue with the finding of the district court that a 1962 Opinion of the Texas Attorney General has concluded that the challenged activity constitutes the business of insurance. The court read the 1962 Opinion as a determination by the Texas Attorney General that a plan "substantially similar" to Blue Shield's plan constituted the business of insurance. Plaintiffs contend that the Attorney General's Opinion held only that the particular firm in question was an insurance company and not that a program substantially similar to Blue Shield's constituted the business of insurance. The plaintiffs allege that the Attorney General's Opinion was based strictly on the facts presented and that it bears no logical relevance to the question whether the activities challenged in this suit constitute the business of insurance. Although the 1962 opinion is not without ambiguity, it appears to focus on the status of the company itself; it does not conclusively establish whether the State considers a plan such as Blue Shield's Pharmacy Agreement to constitute

"the business of insurance." Thus, we are compelled to eschew the heavy weight usually given a state's determination that an activity constitutes the "business of insurance" in favor of the interpretation given the term by the federal courts. *See SEC* v. *Variable Annuity Co.*, 359 U.S. 65, 69, 79 S.Ct. 618, 3 L.Ed.2d 640 (1959).

The State has shed very little light on this matter since the 1962 Attorney General's Opinion discussed above. Although the plaintiffs argue that the State Board of Insurance does not consider The Pharmacy Agreement to encompass or constitute the business of insurance, it is by no means clear that the State has even considered the question. The district court concluded that "[t]he State of Texas has actively regulated the activities challenged in plaintiff's complaint since the inception of Blue Shield's Prescription Drug Insurance *Program.*" (emphasis added). Plaintiffs contend that the State uses the word "program" loosely in that the Board of Insurance approved nothing more than the insurance policy itself and it did not consider the Pharmacy Agreement, which is at issue in this case.

It is clear from the record that the Board has never approved the Pharmacy Agreement, and the Division Manager of the Board's Policy Approval Division, a Mr. Pogue, testified that he thought the Pharmacy Agreement was outside of the State's regulatory control. He stated as follows: "I do not feel that a contract of that nature falls within the jurisdiction of the State Board of Insurance." Plaintiffs argue that the Pharmacy Agreement does not fall within the jurisdiction of the State Board of Insurance simply because it does not constitute the business of insurance.

There is some testimony which contradicts the testimony of Mr. Pogue. A former employee of the State

Board of Insurance, a Mr. Connor, gave an arguably contradictory response to what the plaintiffs describe as a "convoluted question" concerning the exemption of Blue Shield's Prescription Drug Insurance Policy form. With respect to this exemption, the following exchange took place between counsel for Blue Shield and Mr. Connor:

> Q. [By Mr. Kaiser] . . . Mr. Connor, at the time of the issuance of this Exemption Order that you are looking at right now, was it your opinion that this particular contract which is marked Deposition Exhibit 52 [the Prescription Drug Insurance Policy], along with the Participating Drug Pharmacy Agreement which Blue Shield proposed to issue, was it your opinion *that that* constituted the business of insurance?
>
> A. [Mr. Connor] Yes.

Plaintiff concedes that one might draw from this exchange that Connor thought the Pharmacy Agreement was a part of the business of insurance. Plaintiffs argue, however, that the phrase "that that" leaves the issue in doubt because Connor may have understood the phrase "that that" to refer only to the policy itself and not to the Pharmacy Agreement. This position is bolstered by Connor's earlier testimony, wherein he stated that he did not recall having occasion to review the Pharmacy Agreement before drafting the Exemption Order and that he had "no recollection of receiving the document."

The testimony of these officials, therefore, at best raises a factual issue concerning the State's position. It, like the 1962 Attorney General's Opinion, is not a definitive statement of the State's position.

The defendants nonetheless place great emphasis on the extent of state regulation and attempt to minimize plaintiffs' arguments concerning the "business of insurance." They rely on *Crawford* v. *American Title Ins. Co.*, 518 F.2d 217 (5th Cir. 1975), where this court held that pervasive regulation by the State of Alabama over antitrust matters in the insurance industry precluded application of the federal antitrust laws. The problem with the defendants' position is that the McCarran Act applies only when the activity concerned is the business of insurance *and* the activity is regulated by the State. In *Crawford* there was no question that the challenged conduct constituted the business of insurance; rather, the issue was the extent and pervasiveness of state regulation. There seems to be no question that the State of Texas regulates the insurance industry quite vigorously, but there is no similar indication that the activities complained of are considered the business of insurance by the State or by any common sense interpretation of that term.[7]

We recognize that several district courts have rendered decisions contrary to the conclusion we reach today. *Manasen* v. *California Dental Services*, 424 F.Supp. 657 (N.D. Cal. 1976); *Proctor* v. *State Farm Mutual Insurance Co.*, 406 F.Supp. 27 (D.D.C. 1975); *Schwartz* v. *Commonwealth Land Title Insurance Co.*, 374 F.Supp. 564 (E.D. Pa. 1974), subsequent proceedings reported at 384 F. Supp. 302 (E.D.Pa. 1974); *Nankin Hospital* v. *Michigan Hospital Service*, 361 F.Supp. 1199 (E.D.Mich. 1973); *California League of Independent Insurance Producers* v. *Aetna Casualty & Surety Co.*, 175 F.Supp. 857 (N.D.Cal. 1969). Indeed, two such cases have been affirmed on appeal. *Anderson* v. *Medical Service of the District of Co-*

[7] The McCarran Act likewise affords no antitrust exemption to the so-called noninsurance company defendants who are parties to this litigation. Indeed, it would be highly anomalous for this court to conclude that the sale of pharmaceuticals by these defendants constitutes the "business of insurance" for purposes of federal antitrust law.

lumbia, 551 F.2d 304 (4th Cir. 1977); *Frankford Hospital* v. *Blue Cross*, 554 F.2d 1253 (3d Cir. May 2, 1977). Perhaps the most far-reaching of these is the *Manasen* case, in which the district court concluded that the McCarran Act exemption applied to a nonprofit corporation engaged in the administration and operation of prepaid dental care programs. The defendant corporation administered prepaid dental care plans under agreements and contracts with various subscriber groups and subscribing purchasers, including governmental bodies, employer organizations, and joint employer-labor trust funds. The subscribers paid periodic premiums to CDS in exchange for future dental services performed for individuals on whose behalf the premiums were paid.

Professional services were performed by practicing dentists who were classified by CDS as "participating" or "nonparticipating" dentists. In order to attain the "participating" status, a dentist was required to look solely to CDS for payment and to set patients' fees at levels not in excess of the amounts established in a CDS approved fee schedule. Any dentist who did not agree to limit his fees to the range specified by CDS would be classified by the corporation as "nonparticipating." Covered patients who selected participating dentists to perform services would receive full benefits under the program. Patients seeking care from nonparticipating dentists, however, would receive less than the full benefits from CDS. The plaintiffs alleged that this arrangement had the effect of excluding nonparticipating dentists from the CDS market since a CDS patient who sought services from a nonparticipating dentist suffered a financial detriment. Although the defendant corporation was not an insurance company, the court concluded that it was engaged in the business of insurance for McCarran Act purposes. The court placed considerable weight on the favorable impact of the arrangement on the company's insurance rates:

> It is undisputed that the level of dentists' fees are a major factor in determining policy premiums. CDS' payment arrangements to service providers are critical elements in CDS' contractual agreements with its subscribers. These arrangements are intimately related to the interpretation and implementation of CDS' policies and to its reliability as an insurer. Accordingly, the Court finds that the activities challenged in the instant complaint constitute part of the "business of insurance" within the meaning of the McCarran Act.
>
> 424 F.Supp. at 666-67 (footnote omitted).

We find ourselves in serious disagreement with the rationale underlying the *Manasen* decision. An activity is not a part of the business of insurance solely because it has an impact, favorable or otherwise, upon premiums charged by the insurer. Monopolistic or coercive activities in "provider industries" may often have a favorable economic impact upon the rates or the costs of insurance companies. But such practices do not become clothed with McCarran Act protection simply because an insurance company has contracted to pay the provider for products or services.

In *SEC* v. *Nat'l Securities Inc.*, *supra*, the Supreme Court held that the activity of two insurance companies in merging did not constitute the business of insurance, despite the fact that the transaction undoubtedly affected policyholders in terms of the security of their insurance contracts and the reliability of their insurers. Moreover, business activities of insurance companies not peculiar to the insurance industry are outside the scope of the McCarran Act. *Center Ins. Agency* v. *Byers*, (N.D.Ill. 1976); *American Family Life Assurance Co.* v. *Planned Marketing Associates*, 389 F. Supp. 1141 (E.D.Va. 1974); *American General Ins. Co.* v. *FTC*, 359 F.Supp. 887 (S.D. Tex. 1973), *aff'd* 496 F.2d 197 (5th Cir. 1974). As indicated by the activities of the noninsurance company in

Manasen, supra, the activity complained of by plaintiffs is not peculiar to the insurance industry. To be sure, price fixing and coercion induced by firms with superior bargaining power are often found in all industries. Thus, Blue Shield's attempts to control costs in the pharmaceutical industry might just as easily be undertaken by a noninsurance firm attempting to meet a contractual obligation to deliver drugs to a wholesale or retail purchaser.

Manasen and other cases have emphasized the favorable impact that price fixing and coercion have had on insurance premiums and the "reliability" of the insurers. It is conceivable that the public might benefit from price fixing arrangements as long as the parties to the arrangement agree to keep prices below free market levels. The Congress, however, has foreseen that the power to fix prices might not always be beneficially administered by those parties holding the power once their competitior has been put out of business. It is quite clear that competitors can be destroyed by those whose financial resources permit them to reduce prices until their competition is eliminated, only for the purpose of raising prices in the long run. Whether such economic coercion is proper is not for a court to decide. It is a matter of national policy which has been addressed by the Congress, from which any change will originate only after appropriate investigation, hearings and deliberation. We apply the law as presently determined by the Congress and we hold that the antitrust laws are applicable to the arrangements challenged herein.

We conclude, therefore, that Blue Shield's Pharmacy Agreement is not a part of the business of insurance and is not shielded from antitrust scrutiny even though it may have some effect upon the company's policyholders and rates.

REVERSED.

JUDGMENT OF UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, AUGUST 8, 1977

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Caption Omitted in Printing]

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed;

It is further ordered that defendants-appellees pay to plaintiffs-appellants, the costs on appeal to be taxed by the Clerk of this Court.

August 8, 1977

Issued as Mandate:

NOTICE OF ORDER DENYING PETITION FOR REHEARING AND REHEARING EN BANC, OCTOBER 27, 1977

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OFFICE OF THE CLERK
Tel 504—589-6514
600 Camp Street
New Orleans, La. 70130

Edward W. Wadsworth
Clerk

October 27, 1977

TO ALL PARTIES LISTED BELOW:

NO. 76-2746—ROYAL DRUG COMPANY, INC., ETC., ET AL. v. GROUP LIFE AND HEALTH INSURANCE CO., ETC., ET AL.

Dear Counsel:

This is to advise that an order has this day been entered denying the petition () for rehearing,** and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition () for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH
Clerk

By /s/ BRENDA M. HAUCK
Deputy Clerk

** on behalf of appellees, Group Life and Health Ins. Co.

EXHIBITS

EXCERPTS FROM DEPOSITION OF JUDITH J. JOHNSON, NOVEMBER 20, 1975

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

---

* * * *

[4] DIRECT EXAMINATION

BY MR. PULLEN:

Q Would you state your full name, please?
A Judith J. Johnson.
Q Where do you live, Miss Johnson?
A In Dallas.
Q What particular address?
A 7915 Rock Willow, Apartment 152.
Q Who is your present employer?
A Blue Cross-Blue Shield of Texas.
Q Now, is that a corporation?
A Yes, it is.
MR. KAISER: Now, if you are not sure—
THE WITNESS: Well, Blue Cross, Incorporated.
Q (By Mr. Pullen) What is the actual corporate name if you know?
A Group Hospital Service, Incorporated.
Q Group Hospital—
A Service, Incorporated.
Q Incorporated? All right. Miss Johnson, have you ever given a deposition before?
[5] A No, I have not.
Q All right. Well, let me tell you what goes on. I will ask you questions and this young lady will take down the questions and your answers. If for any reason you don't understand the question, well, please tell me and

Excerpts from Deposition of Judith J. Johnson

also if you will please speak up because she can't take down nods of the head.

A Okay.

Q If you for any reason want to take a break or to consult with Mr. Kaiser, well, just state so.

A Thank you.

Q Are you familiar with the company called Group Life and Health Insurance Company?

A Yes, I am.

Q That is not the company that employs you?

A Yes, it is.

Q All right. So Group Life And Health Insurance Company is your employer at this time?

A Along with Blue Cross & Blue Shield, Group Hospital Service, Group Medical And Surgical Service and Group Life and Health.

Q All right. Who do you receive your check from; which of the companies?

A Group Hospital—

MR. KAISER: What is on the check? Who is the [6] maker of the check? Do you know? If you don't know just say so.

THE WITNESS: I don't know.

Q (By Mr. Pullen) As long as it's good it's all right? All right. What is your present position?

A I'm Assistant Vice President of Medical Administration.

Q And what does that entail? What are your duties?

A Are you asking only in relation to the drug program or overall duties?

Q No, overall.

A We have two departments in the Medical Division; Reasonable Charge Department and the Utilization Review Department. My duties require that I oversee the administrative portion of these two departments which process primarily Medicare Part B claims. In additioin

Excerpts from Deposition of Judith J. Johnson

I'm responsible for the on-going administration of the Blue Shield Prescription Drug Program with pharmacies as it relates to enrolling participating pharmacies.

Q How long have you been employed by this group of companies or any of them?

A Twenty-six years.

Q When you first came with the company what [7] was your position?

A Clerk-typist.

Q How long did you stay at that position?

A Six months.

Q Then did you move up?

A Stenographer for six months. Secretary to the medical director from 1950 until 1959. Secretary to the president from 1959 until 1963. In 1963 I retired for five months and returned as secretary to the medical director. I remained in that position until July the 1st of 1972. I became administrative assistant to the vice president medical director and then in January of this year I became assistant vice president.

Q Who is your president [*sic;* "present and"] immediate superior?

A The vice president medical director.

Q What is his name?

A Dr. Louis William Conradt.

Q How long has he been with the company to your knowledge?

MR. KAISER: Just to the best of your knowledge.

THE WITNESS: Since February of 1973.

* * * *

[10] Q What was it in 1969 that led to the establishment of this program?

A The United Auto Workers National Contract.

Q Now, how did that relate to Texas?

Excerpts from Deposition of Judith J. Johnson

THE WITNESS: May I consult with my—
MR. PULLEN: Sure.

(A discussion was had off the record.)

THE WITNESS: I'm not sure of the specifics of the program.

Q (By Mr. Pullen) What was it that led to it becoming part of the Blue Cross-Blue Shield program in Texas as best you know?

A As best I know from my own knowledge and from what I have read?

Q Yes.

A It was the United Auto Workers contract and we had the United Auto Workers covered in Texas and nationally—the drug program was being offered nationally.

• • • •

[12] Q Are you aware of the conversations that Dr. Ferguson or anyone else here at Blue Cross-Blue Shield had with respect to this?

A No, I'm not.

Q Have you ever seen anything in writing regarding it?

A Not that I recall.

Q All right. Now, at that time I believe you said you were secretary to the medical director?

A That's right.

Q All right. Was your only participation at that time the normal duties of the secretary with regard to whatever your employer asked you to do as far as secretarial nature?

A Yes.

Q Now, did that ever change as far as your duties with regard to that program?

A Yes, on July 1, 1972, when I became administrative assistant.

Excerpts from Deposition of Judith J. Johnson

Q Prior to October of 1969, was there any similar type of plan offered to a subscriber by Blue Cross-Blue Shield?

A Not to my knowledge.

Q Do you know other than the United Auto Workers Plan whether the company got its source of [13] information from anyone else or any other company?

A I do not know.

Q All right. How was the plan brought to the attention of the pharmacist[s] in Texas as to whether they wanted to execute one of these agreements?

A A letter was sent to the pharmacist[s] inviting them to become a participating pharmacy.

MR. KAISER: Let's go off the record a minute.

(A discussion was had off the record.)

(The last question was read back by the Court Reporter.)

Q (By Mr. Pullen) You are familiar with the Participating Drug Pharmacy Agreement, are you not?

A Yes.

Q Has that ever changed since 1969?

A No, it has not.

Q In other words, the agreement that's being used today and which has been used since 1969 is still the identical agreement?

A Yes, sir.

MR. PULLEN: All right. Let's go off the record.

(A discussion was had off the record.)

[14] MR. KAISER: Mark all exhibits in this case sequentially in numerical order. What did we do with Hatfield?

MR. PULLEN: Other than Hatfield.

Excerpts from Deposition of Judith J. Johnson

MR. KAISER: Other than the deposition of Mr. M. A. Hatfield counsel will stipulate that we will mark all deposition exhibits from here on out sequentially beginning with Deposition Exhibit Number 1 ad infinitum. Do you want also to stipulate that we can introduce Xerox copies as opposed to the originals without any objections to the best evidence rule?

MR. PULLEN: Right.

MR. KAISER: Is that okay with you?

MR. WALRAVEN: Fine.

(Deposition Exhibit Number 1 was marked for identification and a Xerox copy will be attached to the deposition.)

Q (By Mr. Pullen) Miss Johnson, I'm going to hand you a Participating Drug Pharmacy Agreement which has been marked as Deposition Exhibit 1 and ask you if that agreement is the agreement form that has been used since the inception of the prepaid drug plan?

MR. KAISER: Counselor, are you referring to the agreement with the exception of the handwritten [15] portions filled in on the blanks?

Q (By Mr. Pullen) Yes. In other words, just the printed portion of it.

A Yes, it is.

Q All right. And this agreement has never been changed as to the printed terms to your knowledge since its inception?

A No, it has not.

Q Do you know who drafted that agreement?

A No, I do not.

* * * *

[17] Q You did not participate in these contacts?

A No, I did not.

Excerpts from Deposition of Judith J. Johnson

Q Do you know who did?

A No, I do not.

Q How did you secure the names of the pharmacist[s] who were invited to execute this agreement?

A The file reflects that in 1969 a listing was obtained from the Texas State Board of Pharmacies.

Q All right. So then this was mailed to all of the pharmacies on that list as far as you know?

A As far as I know.

Q Were there any rules or regulations as to whether a pharmacy would or would not be acceptable to execute this agreement insofar as Blue Cross-Blue Shield was concerned?

A Of course they must be a licensed pharmacy and to my knowledge that's the only requirement.

Q In other words, were there any written policies here at Blue Cross-Blue Shield concerning who could execute the agreement?

A None other than the agreement itself and the manual which contains essentially the same wording.

Q Now, what is the manual?

A Participating Drug Manual which is sent to each participating pharmacy.

* * * *

[24] Q How was the determination made to provide for payment of a fixed $2.00 fee to the pharmacist?

A I do not know.

Q Do you know if any studies were made as to whether that was an adequate fee?

A I do not know.

Q Can you tell me who might know?

A There were a number of people involved in 1969 and I'm sorry I cannot specifically give you a name.

Excerpts from Deposition of Judith J. Johnson

Q All right. Just give me the names of the people who were involved.

A Well, of course Dr. Doyle Ferguson who is now deceased; our legal division.

Q Now, who was in the legal division then?

A Mr. Jack Ponder.

Q All right. That's the same Jack Ponder who is still here with the company?

A That's right.

Q All right. Who else?

A Mr. W. F. Hachmeister.

Q How is that spelled?

A (Spelling) H-a-c-h-m-e-i-s-t-e-r.

[27] Q (By Mr. Pullen) There's a difference in reimbursement, is there not, if the subscriber goes to a participating pharmacist and if they go to a non-participating pharmacist?

A Yes, there is.

Q What is the difference?

A The non-participating pharmacies are not paid direct. Seventy-five percent is paid to the member or subscriber.

Q All right. What is the reason for the difference in treatment?

A I do not know.

Q Who would know that?

A I do not know.

Q All right. Do you have any idea as to who might within the company?

A Those who drafted the agreements.

Q All right. That you named previously?

A Right.

Q All right. Do you know if there were any studies made to determine the $2.00 figure as to whether it was appropriate or adequate or inadequate?

A No, I do not.

Excerpts from Deposition of Judith J. Johnson

Q Have there been any studies made since 1969 when this coverage was instituted here in Texas as to [28] whether the $2.00 figure is adequate or inadequate?

A No, not to my knowledge.

Q All right. Have there been any complaints received from the pharmacists who have executed the Participating Drug Pharmacy Agreement about any aspect of the agreement?

A Yes, there have been.

Q All right. What aspects did they complain about?

A Two dollar professional fee.

Q All right. What were their complaints?

A They indicated they did not feel it was adequate.

Q Did they give any indication what they thought was adequate?

A The amounts varied.

Q From what to what as best you can recall?

A As best I can recall from two twenty-five to three dollars.

Q The Medicare Part B claims, what do those involve; what type of coverage?

A Primarily physician and durable medical equipment. Those are the two primary—

Q Do they involve drugs in any manner?

A No, they do not.

* * * *

[32] Q What is the reason for having the Participating Drug Pharmacy Agreement which is Deposition Exhibit 1 with a pharmacist?

A Would you repeat the question, please?

MR. PULLEN: Would you read it back?

(The above question referred to was here read back by the Court Reporter.)

Excerpts from Deposition of Judith J. Johnson

THE WITNESS: May I consult with—
MR. PULLEN: Yes.

(A discussion was had off the record.)

THE WITNESS: I cannot testify to the reason.

Q (By Mr. Pullen) Does it serve any purpose in your opinion?

MR. KAISER: You are asking for her personal opinion or her opinion as a representative of the company?

MR. PULLEN: Both since you designated her as most familiar with it.

(A discussion was had off the record.)

THE WITNESS: Of course it is an agreement between Group Life and Health Insurance Company and individual pharmacy involved. To me the [33] purpose it serves is that they agree to deliver the benefits provided to that subscriber thereby servicing our subscriber.

Q (By Mr. Pullen) They could service him without signing the agreement, could they not?

A In my opinion we would not know that they were servicing them.

Q Well, pharmacists normally do fill prescriptions of people that come in and request them to do so, do they not?

A Usually.

Q Now, are you telling me that insofar as you know the only purpose for the Participating Drug Pharmacy Agreement which is Deposition Exhibit 1 is so that Group Life and Health Insurance Company will know that their subscribers are being serviced?

A Without giving you an assumption, yes.

Q All right. Why is it necessary again if you know to set out a professional dispensing fee in the Participating Drug Pharmacy Agreement?

Excerpts from Deposition of Judith J. Johnson

A As a part of the benefit provided through the contract with the subscribers to the best of my knowledge.

Q Now, what benefit do you refer to when you say that?

[34] A The benefit as described in the Participating Agreement.

Q Now, are you referring to Deposition Exhibit 1?

A Yes.

Q Does the subscriber ever see that or is that just between the pharmacist and Group Life and Health Insurance Company?

A That's merely between the pharmacy and Group Life and Health Insurance Company.

Q All right. So what the subscriber would see would be the contract between the subscriber and Group Life And Health Insurance Company, is that correct?

A That's correct.

Q All right.

(A discussion was had off the record.)

THE WITNESS: I was talking about the benefits as outlined in the contract with the subscriber.

Q (By Mr. Pullen) All right.

A That would be the same as those in the agreement.

Q All right. Why the difference in reimbursement of a participating pharmacist and a non-participating pharmacist?

[35] A I do not know.

Q It's not based on any quality of service provided by the pharmacist, is it?

A Not to my knowledge, no.

Q And as I understand it every pharmacist in the State of Texas was invited to and still may if they so

desire enter into a Participating Drug Pharmacy Agreement?

A That's right.

Q And there are no rules or regulations or criteria that Group Life And Health Insurance Company has as to who may enter into one of these agreements other than that fact that they must be duly licensed under the laws of the State of Texas as pharmacists?

MR. KAISER: I object to the form of the question. It's a statement.

Q (By Mr. Pullen) All right. Are there any rules or regulations or criteria with respect to pharmacists which would govern their executing a Participating Drug Pharmacy Agreement other than the fact that they must be duly licensed by the State of Texas?

A Not to my knowledge, no.

* * * *

[38] Q Do you have anything to do with sales of the prepaid drug prescription coverage to groups or individuals in the state?

A No, I do not.

Q All right. Who handles that?

A Marketing division.

Q What is the name of the individual?

A Mr. Hugh Eller (spelling) E-l-l-e-r.

Q Okay. Have you ever been told that a Participating Drug Pharmacy Agreement should be terminated with any pharmacist for any reason? By terminate I mean terminated by Group Life And Health Insurance Company.

A No, I have not.

Q Does Group Life or any of the Blue Cross-Blue Shield companies go into the particular pharmacist['s]

professional qualifications at all other than the requirement that they have a license?

A No, they do not.

Q Have there been any sales of the prepaid prescription drug coverage to any employer groups in San Antonio of which you are aware since the prepaid prescription coverage was first began?

A Yes, there have been.

* * * *

[40] Q Are there any other plans that Blue Cross-Blue Shield are involved in in Bexar County, Texas providing for prepaid prescription coverage?

A Not to my knowledge, no.

Q Do you know of any plans with the San Antonio Independent School District that Blue Cross-Blue Shield is involved in?

A Not to my knowledge.

Q All right. What happens if a pharmacist had signed a Participating Drug Pharmacy Agreement and he charges the subscriber more than the $2.00?

A If we were informed of it we would contact the pharmacy. To my knowledge that has not happened.

Q Is there any company policy about what would be done if the pharmacist said I'm going to charge more than the $2.00?

A It would be in violation of the contract.

* * * *

[49] Q All right. I'm going to ask the Reporter to leave a blank in the deposition and if you would would you tell us how many people were involved in the L.T.V. program as of the date of this letter?

MR. KAISER: Well now, would that be information that you would have in your office?

THE WITNESS: Not in my office. It would be available within the organization.

MR. KAISER: Okay. We'll find out and put it in.
45,961—as of August 22, 1974
MR. PULLEN: All right. Would you mark that?

(Deposition Exhibit Number 4 was marked for identification and a Xerox copy will be attached to the deposition.)

• • • •

[53] Q (By Mr. Pullen) Miss Johnson, I'm going to hand you what's been marked as Deposition Exhibit 7 which is a letter to Patts Drug Store dated December 30th, 1974, and ask you if you wrote the letter and if it was mailed back to you with the handwritten matter at the bottom and on the top of the next page.

A This is a routine letter that went out over my signature.

Q Do you recall receiving a copy back with the language at the bottom of the page and at the top of the following page?

A Yes, I do recall receiving it.

Q Now, if I may summarize and if I summarize it incorrectly please tell me; the language at the bottom is in handwriting which is apparently from Mr. Albert Papa. It states that he does not want to participate in the prepaid prescription drug program [54] because the fee is inadequate and does not take into consideration the different services that an individual pharmacy may perform. Is that not correct?

A Yes, that is correct.

Q Did you bring Mr. Papa's complaint to anyone's attention?

A I sent a carbon copy to Mr. Ray Pace.

Q All right. Now, who is Mr. Ray Pace?

A He's in our marketing division.

Q All right. Mr. Papa's complaint is accurate, is it not, in that a pharmacist who had signed Exhibit Number 1 got $2.00 no matter whether he performed merely the filling of the prescription or whether he delivered or whether he was open on various days?

MR. KAISER: I'll object to the question. The witness can't testify as to the accuracy of Mr. Papa's complaints. That's looking into the mental processes of one who wrote a document.

Q (By Mr. Pullen) The $2.00 fee applied to all pharmacies?

A That is correct.

Q It didn't matter what services they performed for their customer?

A That's correct.

Q The fee was not altered?

[55] A That's correct.

Q If it was a pharmacist where you drove up yourself and handed him the prescription and waited for it he would get $2.00 if he was a participating pharmacist and if he was called in and he had to deliver it he would still get $2.00?

A That's correct.

• • • •

[60] Q (By Mr. Pullen) Miss Johnson, I'm going to hand you Deposition Exhibit 12 which is an interoffice correspondence to Ray Pace from David Thigpen concerning Sommers Drug Store. I'll ask you to read the last line in that. Do you know what he was thanking you for?

A Yes, I do.

Q All right. What was it?

A I had received a telephone call—to the best of my recollection it was from Mr. Ray Pace indicating to me that Sommers had not received their letter.

Q Now, which letter are you referring to?

A Inviting them to become a participating pharmacy.

Q All right.

Excerpts from Deposition of Judith J. Johnson

MR. KAISER: Just a minute. I'll ask you, [61] Miss Johnson, are you referring to what's been marked as Deposition Exhibit Number 4?

THE WITNESS: Yes, I am. Therefore I had a copy made of the letter and sent it to Mr. Fred Holden asking that he have the letter delivered.

Q (By Mr. Pullen) All right.

A To the best of my recollection that is what he was thanking me for.

(Deposition Exhibit Number 13 was marked for identification and a Xerox copy will be attached to the deposition.)

Q (By Mr. Pullen) Miss Johnson, I'm also going to hand you Deposition Exhibit 13 which is an inter-office correspondence dated November 19, 1974, to you from David Thigpen and ask you if you've seen that?

A Yes, I have.

Q What does he refer to as the entire foundation program?

MR. KAISER: Well, if you know what he's referring to fine and if you don't tell Mr. Pullen.

(A discussion was had off the record.)

THE WITNESS: That's referring to the groups in San Antonio.

* * * *

[68] Q (By Mr. Pullen) Deposition Exhibit 21 appears to be a Participating Drug Pharmacy Agreement between Group Life And Health Insurance Company and Globe Stores, Inc., is that not correct?

A Yes, it is.

Q All right.

(Deposition Exhibit Number 22 was marked for identification and a Xerox copy will be attached to the deposition.)

Excerpts from Deposition of Judith J. Johnson

Q (By Mr. Pullen) Deposition Exhibit 22 appears to be the Participating Drug Pharmacy Agreement with Marvin Drug Company of Texas, is that not correct?

A Yes, it is.

Q Now, I notice that Exhibit 20, 22 and 19 all have the same billing address of 4300 Peterson Avenue, Chicago, Illinois. Do you know why they all use that same address?

A To the best of my knowledge they are all companies or subsidiaries of Walgreens.

* * * *

[83] Q (By Mr. Pullen) All right. I now hand you Deposition Exhibit 35 and ask you if you recall ever seeing that?

A I do not recall.

Q All right. Do you recall in dealing with SupeRx Drugs that they were headquartered in Cincinnati, Ohio?

A Yes, I do recall.

Q Is this where their claims would be submitted from and the checks sent to them from Blue Shield?

A I'm sorry. I don't remember.

MR. PULLEN: All right. I don't believe I have any further questions. Thank you very much.

CROSS EXAMINATION

BY MR. KAISER:

Q Miss Johnson, let me hand you what has previously been marked as Deposition Exhibit Number 4 and I'll ask you if that is a standard letter that is sent out to all pharmacies as far as the text is concerned?

A Yes, it is.

Q Well, do you receive them in printed condition [84] with respect to the text?

Excerpts from Deposition of Judith J. Johnson

A We did on this particular mailing because it was mass mailing. The others are individually typed—the variation being the opening paragraph.

Q All right. With respect to this letter marked as Exhibit 4 what would be the difference in the letter that was received by, say, X Drug Store in San Antonio? My question is would there be any difference in the letter except for the address block?

A No.

Q Let me hand you what has been marked as Deposition Exhibit Number 9. Is that a standard form letter that is sent out or was sent out by your office?

A It was sent out by Dr. Ferguson in 1969.

Q Well, my question is was that a standard form letter that was sent out to many pharmacies?

A Yes, it was.

Q I hand you Deposition Exhibit Number 10. Would that also be a standard form letter that was sent out?

A Yes.

* * * *

BLUE SHIELD OF TEXAS FORM LETTER AND ENCLOSURES (PARTICIPATING DRUG PHARMACY AGREEMENT, DRUG MANUAL, DECAL AND FORMS) ("EXHIBIT 2" TO DEPOSITION OF JUDITH M. JOHNSON, NOVEMBER 20, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

BLUE CROSS
BLUE SHIELD
OF TEXAS

[LOGOS]

Louis W. Conradt, M.D.
Associate Medical Director
214/741-8764

Ernest A. Maxwell, M.D.
Vice President, Medical Director

Post Office Box 22001
Dallas, Texas 75222
214/741-8751

Date

Store Name
Address
City, State, Zip

Gentlemen:

Enclosed is your signed copy of the Participating Drug Pharmacy Agreement, a drug manual, decal and a supply of forms. Also enclosed is your plastic identification card, which is to be used in your Data Recorder Machine (Master Charge, Bankamericard or Vendor Drug Program) to insert your identification information on the claim form. In conjunction with the pharmacy's plastic identification card, each Blue Shield member who is covered by the

Blue Shield of Texas Form Letter, etc.

Blue Shield Prescription Drug Progam will be issued a plastic identification card, which is to be used separately in the Data Recorder to imprint the member's name, group and identification numbers.

Thank you for your participation and cooperation.

Sincerely,

Judy Johnson, Assistant Vice President,
Medical Administration

JJ:cw
enclosures

Blue Shield of Texas Form Letter, etc.

BLUE CROSS
BLUE SHIELD
OF TEXAS

[LOGOS]

Louis W. Conradt, M.D.
Associate Medical Director
214/741-8764

Ernest A. Maxwell, M.D.
Vice President, Medical Director

Post Office Box 22001
Dallas, Texas 75222
214/741-8751

Date

Store Name (Chain)
Address
City, State, Zip

Gentlemen:

Enclosed is a drug manual, decal and a supply of forms. Also enclosed is your plastic identification card, which is to be used in your Data Recorder Machine (Master Charge, Bankamericard or Vendor Drug Program) to insert your identification information on the claim form. In conjunction with the pharmacy's plastic identification card, each Blue Shield member who is covered by the Blue Shield Prescription Drug Program will be issued a plastic identification card, which is to be used separately in the Data Recorder to imprint the member's name, group and identification numbers.

Thank you for your participation and cooperation.

Sincerely,

Judy Johnson, Assistant Vice President,
Medical Administration

JJ:cw
enclosures

TEXAS BLUE SHIELD® PRESCRIPTION DRUG PROGRAM

® R.T.M. of NABSP

Revised 8-1-72

FOREWORD

This manual is intended to supplement your Participation Agreement and to acquaint you with the Blue Shield Prescription Drug Program benefits and procedures. While it is not a legal basis for interpreting our contracts, it is a comprehensive instructional guide for billing procedures and other Blue Shield matters.

Blue Shield will, from time to time, send you new pages for insertion to keep you informed of changes.

Blue Shield of Texas Form Letter, etc.

TABLE OF CONTENTS

Blue Shield of Texas Form Letter, etc.

TABLE OF CONTENTS—Continued

WELCOME TO THE BLUE CROSS AND BLUE SHIELD "FAMILY"

We are very glad to have you as a Participating Pharmacy in the Blue Shield Prescription Drug Program. It is our hope that in this joint effort we will work together in mutual understanding and harmony and that together we will be able to serve the health care needs of the community more effectively.

We value highly the relationship that we enjoy with all of our providers. It is for this reason that we have in our organization a Medical Division for the purpose of maintaining and improving relations with the various providers of the health care delivery system. The men who head up the division are physicians. The Professional Relations Representatives who assist them are highly skilled and knowledgeable in the health care field. These men are here to help serve you.

DESCRIPTION OF PRESCRIPTION DRUG PROGRAM

The Texas Blue Shield Prescription Drug Program has extended coverage to Subscribers (employees) of certain groups who have been issued Blue Cross Blue Shield identification cards indicating that the subscriber and his dependents are covered under this Program. Blue Shield has guaranteed the subscriber his free choice in selecting a pharmacist to provide pharmaceutical services under this Program. This Program will allow the pharmacist to provide the most comprehensive services to the patient, and will provide ease in billing and post auditing. Patients with drug benefits under their Blue Shield contract will present a Blue Cross-Blue Shield Identification Card when requesting services.

DEFINITIONS

Acquisition Cost—The actual invoice cost of a drug with the exception of cash discounts, but including trade discounts, such as quantity, rebates, price concessions, etc. to the provider or to the company, organization or its affiliates with which the Provider is associated, whichever is less.

Explanation:

This definition recognizes that the actual cost of a drug to certain large chain stores, hospital, etc. is often less than the cost to other Providers. Consequently, the cost of the drug to the company or organization will be used rather than the cost to the establishment or individual actually dispensing the drug.

Cash discounts allow a reduction from invoice price for prompt payment. Cash discounts are not considered in determining the actual invoice cost. Trade discounts allow reductions from invoice price without regard to date of payment. Discounts given for quantities purchased or for items purchased at a time other than when they are in high demand are examples of trade discounts. Trade discounts are considered in determining the actual invoice cost.

Providers sometimes receive discounts in the form of cash rebates from a supplier based on the dollar volume purchased during a given period of time. To the degree possible, such rebates are to be considered in the determination of Acquisition Cost.

Co-Payment (Also Called "Drug Deductible") Amount—An amount, to be paid by a subscriber for each separate Prescription Order and refill or a Covered Drug, not to exceed $2.00.

Explanation:

For drugs dispensed by a Participating Provider the subscriber will not, for any reason (such as sales tax, delivery charge, etc.), be required to pay any amount in addition to the Co-Payment Amount.

The Co-Payment Amount of $2.00 will be used by Blue Shield for determining the amount of benefit payment to the Provider.

Covered Drug—Injectable insulin or any Prescription Legend Drug or any medication compounded by the Provider which contains a Prescription Legend Drug provided that the drug is ordered by a Physician or Dentist; is one for which a written Prescription Order is customarily prepared; is one for which a separate Usual and Customary charge of $2.00 or more is normally made and is one which is not entirely consumed at the time and place of the Prescription Order. Contraceptive Medications are not a covered drug.

Explanation:

Compounded medications which contain a Prescription Legend Drug are not always required to bear the legend "Caution: Federal Law prohibits dispensing without a prescription." However, when a Provider prepares, pursuant to a Prescription Order, a compounded medication in which at least one ingredient is a Prescription Legend Drug, the compounded medication is a Covered Drug if it meets the other requirements in the definition of a Covered Drug.

The two phrases ". . . for which a written Prescription Order is customarily prepared . . ." and ". . . and which is not entirely consumed at the time and place of the Prescription Order . . ." exclude from the program drugs administered and entirely consumed

in connection with care rendered in the home and office.

Any drug for which the Provider's Usual and Customary Charge is less than $2.00 is *not* a Covered Drug under the Program.

A drug requiring a prescription by State, but not Federal Law, is *not* a Covered Drug. This program pays for Covered Drugs only.

Provider—A Pharmacy, Pharmacist, Physician, Dentist or any other person or organization legally licensed to dispense drugs.

Pharmacy—A licensed establishment where Prescription Legend Drugs are dispensed by a Pharmacist.

Non-Participating Provider—A Provider who has not entered into a Participation Agreement with Blue Shield.

Participating Provider—A Provider who has entered into a Participating Contract with Blue Shield of Texas to provide a Covered Drug at a cost to a subscriber not to exceed the Co-Payment Amount of $2.00 and a total payment from Blue Shield and the subscriber not to exceed the cost of the Covered Drug plus a dispensing fee.

Prescription Legend Drug—Any medicinal substance—the label of which, under the Federal Food, Drug, and Cosmetic Act is required to bear the legend: "Caution: Federal Law prohibits dispensing without a prescription."

Prescription Order—A written or oral request by a Physician or Dentist for a single Prescription Legend Drug.

Explanation:

While injectable insulin is not a Prescription Legend Drug and does not require a Prescription Order, it is a Covered Drug under this Program.

Dispensing Fee—An amount or amounts predetermined by Blue Shield to compensate Participating Providers for dispensing Covered Drugs.

Any applicable sales tax is to be considered as included in the Dispensing Fee. For this Drug Program, the dispensing fee is $2.00.

Prescription Charges—For a Participating Provider, Prescription Charges means the Acquisition Cost plus the Dispensing Fee for a Covered Drug except for injectable insulin. In the case of injectable insulin, Prescription Charges means the Usual and Customary Charge or the Acquisition Cost plus the Dispensing Fee, whichever is lower. For a Non-Participating Provider, Prescription Charges means the Usual and Customary Charge for a covered drug.

For a Provider out of the State of Texas, Prescription Charges means the Usual and Customary Charge for a Covered Drug.

Usual and Customary Charges—When determined by Blue Shield to be a reasonable amount, the Usual and Customary Charge is the amount, including sales tax, actually charged by: (1) a Participating Provider for injectable insulin; (2) a Non-Participating Provider for a Covered Drug; or (3) a Provider out of the State of Texas for a Covered Drug.

Explanation:

In determining what constitutes a reasonable amount, Blue Shield will take into consideration:

a. The amount which the Provider most frequently charges the majority of recipients for the Covered Drug;

b. The range of charges by other Providers for the Covered Drug.

Utilization Record—A record of all claims submitted to and paid by Blue Shield for a subscriber and his eligible dependents.

Physician—One who is legally qualified and licensed to practice medicine and perform surgery at the time and place services are rendered; and for the purpose of this program, a doctor of medicine, a doctor of osteopathy, or a podiatrist who is legally licensed to prescribe medications within a scope of that license.

Dentist—A doctor of dental surgery or a doctor of dental medicine legally licensed to prescribe medications within the scope of that license.

Pharmacist—A person licensed to dispense Prescription Legend Drugs under the laws of the State of Texas.

Member or Subscriber—An employee who is covered by this Drug Program issued to his employer.

Dependent—Only a subscriber's spouse and any unmarried child who is either under twenty-five years of age or totally and permanently disabled, for whose covered application has been made by the subscriber and accepted by the Insurer; provided that, in the case of a child who is over nineteen years of age and is either under the age of twenty-five or totally and permanently disabled, he is legally residing with and dependent upon the subscriber for more than one-half of his support as defined by the Internal Revenue Code of the United States. In the case of any child over twenty-five years of age who is determined by the Insurer to be totally and permanently disabled, the Insurer shall have the right to require periodic certification of the child's physical condition from the subscriber as a condition to the continued coverage of the child as a Dependent. "Totally and permanently disabled" means any medically determinable physical or mental con-

dition which prevents the child from engaging in substantial, gainful activity and which can be expected to result in death or to be of long-continued or indefinite duration.

BENEFITS UNDER THE PROGRAM

The Texas Blue Shield Prescription Drug Program will pay for Insulin and all Drugs which bear the Federally required legend, "Caution: Federal Law prohibits dispensing without a prescription," except contraceptives, obtained by and for the use of a member in accord with the conditions in this manual on the date the service is performed. In order to be a Covered Drug there must be a prescription by a physician or dentist; must not be entirely consumed at the time and place that the Prescription Order is given; must be one for which a separate charge is customarily made; and must be one for which a written Prescription Order is customarily prepared; and must be one for which the charge exceeds the deductible. Benefits shall be provided for Covered Drugs prescribed on and after the effective date of this Program of October 1, 1969, even though the Prescription Order may have been issued prior to the effective date.

Explanation:

By definition, a Prescription Legend Drug is any medicinal substance which under the Federal Food, Drug and Cosmetic Act is required to carry on its label the legend, "Caution: Federal Law prohibits dispensing without a prescription." A Legend Drug, then, cannot be dispensed without a prescription. Aspirin tablets or any medication which can be purchased at a drug store without a prescription from a doctor or dentist are not considered Prescription Legend Drugs. Drugs which require a prescription under State law but not under Federal law are not

covered. Paregoric, by Texas law requires a prescription when more than one ounce is dispensed. The Drug Program will provide benefits for this drug as long as the charge exceeds the $2.00 co-payment amount. Drugs such as Penicillin and Sulfa, which under Federal Law require a prescription order, are Prescription Legend Drugs and are covered.

A compounded medication is also a "covered" drug if it contains a Prescription Legend Drug. A compounded medication refers only to a medication which is compounded by the pharmacist (or Provider). A drug in its final form, which is a compound, [which] requires no mixing by the Provider is therefore, not a compounded medication. A compounded medication which includes at least one Prescription Legend Drug as one of its ingredients, is not required to carry the Legend: "Caution, Federal Law Prohibits Dispensing without a Prescription", but is a covered drug. However, a compounded medication is covered only with a prescription order from a doctor or dentist.

Injectable Insulin is the only injectable drug which can be dispensed without a prescription order from a doctor or dentist. Used in the control of diabetes, this drug in its injectable form can be sold "across the counter". The reason for this is obvious. To the diabetic, the availability of Injectable Insulin in an emergency could mean the difference between life and death. This Drug Program will cover Injectable Insulin for this reason.

This program will not interfere with the right of the pharmacist to exercise professional judgment. A participating pharmacist is under no obligation to dispense a prescription order which, in his professional opinion, should not be dispensed. Should the physician elect to

prescribe in generic form, the pharmacist shall dispense the lowest cost drug in stock which meets official compendium specifications, and which, in his professional opinion, fulfills the physician's requirements. See Exclusions.

Quantity of Medication

The maximum supply of medication allowed in this program will be 34 days except that the plan will pay for 100 unit doses (e.g., tablets or capsules) of a natural thyroid product and 100 unit doses of Nitroglycerine, and Maintenance Legend Drugs (Stabilizing Drugs). Payment will be made for authorized prescription refills, not to extend beyond one year from the date of the original order.

Explanation:

For example, a doctor discovers that a subscriber has a severe iron deficiency. He gave a non-refillable prescription for an iron capsule which is to be taken once a day for 2 months. We will assume that the iron capsule prescribed is a "covered" drug. If the Prescription Order indicates a 60 day supply of medication (2 months), the Prescription Drug Program would only pay for a 34 day supply or in this case, 34 iron capsules (minus the Co-payment Amount, etc.).

If the prescription order indicated one refill, Blue Shield would pay for 34 iron capsules on the original prescription order and 34 additional iron capsules when the prescription was refilled.

This "34 day supply" limitation is waived for nitroglycerin, natural thyroid product, and Maintenance Legend Drugs (Stabilizing Drugs). In the case of these drugs, 100 unit doses (100 capsules, 100 tablets, etc.) will be covered with a prescription order for 60 nitroglycerin tablets (one a day for 2 months) or 60 thyroid pills, or Maintenance Legend Drugs Blue Shield would cover the full 60 day supply (minus the Co-payment Amount, etc.).

The Dispensing Fee

The Texas Blue Shield dispensing fee for pharmaceutical service is $2.00.

Co-Payments (Drug Deductible)

The co-payment (drug deductible) for the Texas Blue Shield Prescription Drug Program is $2.00.

Payment

Participating Pharmacist: Payment to the Provider will be made in accordance with the Participation Agreement.

The Provider has agreed:

1. To charge as payment in full for a covered drug, his acquisition cost plus a dispensing fee of $2.00.
2. To charge the subscriber no more than the co-payment amount or deductible which is $2.00.

Blue Shield has agreed:

To pay a participating Provider as payment for a covered drug, acquisition cost plus a dispensing fee less the deductible.

If a Provider is in doubt as to whether a person is an eligible subscriber or eligible dependent, the provider will charge his acquisition cost plus the dispensing fee, complete the claim form and collect the appropriate amount from the questionable subscriber.

Explanation:

For example, a subscriber presents a covered drug prescription to a participating provider but does not have an appropriate identification card to demonstrate his eligibility. The provider does not want to assume the risk of filling the prescription and having that prescription rejected by Blue Shield. Accordingly, the provider would fill the prescription, complete the form so it will enable the subscriber to receive from Blue Shield a payment of the drug acquisition cost plus a dispensing fee, less the deductible. The provider will collect his cost plus a dispensing fee from the subscriber.

Non-Participating Pharmacist: No payment will be made under this program to a non-participating pharmacist. There is a provision to pay to the member on a reimbursement basis for some of his costs for covered drugs. Insulin will be paid on the basis of the usual and customary charge to the public, or on the basis of acquisition cost plus dispensing fee, whichever is less.

Explanation:

Example
Participating Provider
Injectable Insulin
(4 Vials of U-40 Insulin)

#1		#2	
Acquisition Cost	$4.00	Usual & Customary	$5.00
Plus Dispensing Fee	±2.00	(No Dispensing Fee)	—
Equals the Prescription Charges of	$6.00	Total Prescription Charges	$5.00
Less Co-Payment	−2.00	Less Co-Payment	−2.00
Equals the Payment to Provider	$4.00	Equals the Payment to Provider	$3.00

In the example on injectable insulin, Blue Shield will pay a Participating Provider according to #2 because the Usual and Customary charge method results in a lower prescription Charge than does the Acquisition Cost plus the Dispensing Fee method.

EXCLUSIONS

The following are not to be included as allowable benefits under the Texas Blue Shield Prescription Drug Program:

A. No benefit shall be available to a member if he is entitled to receive reimbursement under Workmen's Compensation laws or is entitled to coverage from any municipal, State or Federal Program, whether contributory or not.

B. Any charge for a contraceptive medication, even if such medication is a Prescription Legend Drug.

C. Any charge for therapeutic devices or appliances (e.g., hypodermic needles, syringes, support garments, and other non-medical substances) regardless of their intended use.

D. Any charge for administration of Prescription Legend Drugs and injectable insulin.

E. The charge for medications furnished on an inpatient basis. (Drugs furnished while a bed-patient in a hospital.)

F. The charge for medications furnished on an outpatient basis where coverage is furnished under any other Blue Cross and/or Blue Shield contract or any other carrier providing group coverage to the extent the payment duplicates the benefits of the other coverage, subject to a coordination of benefits provision.

G. The charge for more than a 34 day supply of a medication, except that the Program will cover 100 unit doses (e.g., tablet or capsule, etc.) of a natural thyroid product and 100 unit doses of nitroglycerine and Maintenance Legend Drugs (Stabilizing Drugs).

H. The charge for any prescription refill in excess of the number specified by the Physician, or any refill dispensed after one year from the Physician's order.

I. Drugs for which the provider customarily charges less than the co-payment amount.

J. Any drug for which a separate charge is not customarily made.

K. Any drug consumed at the time and place of the Prescription Order.

L. Any drug which is not required under Federal Law to bear the legend, "Caution: Federal Law prohibits dispensing without a prescription" regardless of state laws.

M. Drugs dispensed prior to the effective date of this program.

CLAIMS ADMINISTRATION

Valid Identification Card

Persons eligible for the Prescription Drug Program will be issued plastic cards as depicted below. Note especially the three items pointed out to assure a current and valid card. The following are examples of the current I.D. cards for the Prescription Drug Program.

[Identification Cards Omitted in Printing]

Blue Shield of Texas will be issuing a plastic I.D. card for Texas Prescription Drug Program members. The new claim form is so designed to accommodate this card. Also, almost every type of imprinter can be used for this card and claim form. Follow the instructions for your imprinter to imprint the I.D. card information on the claim form.

IMPORTANT NOTE

The member will still carry the paper I.D. cards to use in filing other professional services. The group number and I.D. number is identical on both cards, therefore, either card should give the correct membership information.

[Identification Card Omitted in Printing]

The new claim form will not be preprinted with your Blue Shield provider number and address; however, each Participating Pharmacy will be issued a plastic identification card. The I.D. card should be used with an imprinter to give the pharmacy identification information required on the claim form. Upon request, a replacement will be furnished.

[Identification Cards Omitted in Printing]

SEE EXPLANATION ON REVERSE SIDE OF COPY 2

GROUP

PAYMENT DUE MEMBER (SHOW ADDRESS)

PAYMENT DUE PHARMACY

PHARMACY IS NON-PARTICIPATING

(SHOW NPP'S ADDRESS)

BLUE SHIELD OF TEXAS
PRESCRIPTION DRUG PROGRAM

CLAIM NO

BLUE SHIELD USE ONLY ▶ | BSD NO | BLUE SHIELD CONTROL NUMBER | N/C CODE | DATE PAID

DATE DISPENSED | PRESCRIPTION NUMBER | METRIC QUANTITY DISP

EACH CC GM | REFILL | DAYS SUPPLY

NATIONAL DRUG CODE | CMPD

PRODUCT COST(S)

TOTAL

DRUG | MFR | AMOUNT DUE

STRENGTH | DOSAGE FORM

PATIENT INFORMATION

FIRST NAME | AGE | SEX (CHECK) M ☐ F ☐

PATIENT IS ☐ SUBSCRIBER ☐ SPOUSE ☐ CHILD ☐ OTHER

I certify that the service described hereon has been provided in accordance with the Participating Drug Pharmacy Agreement with Blue Shield of Texas.

X

SIGNATURE OF PHARMACIST

X

SIGNATURE OF PATIENT OR LEGAL REPRESENTATIVE

Mail last copy to: BLUE SHIELD OF TEXAS
BOX 22284
DALLAS, TEXAS 75222
TELEPHONE 741 3761

PORTANT NOTICE TO MEMBER When payment is to be made to the member the Prescription Information Section should be completed by the Pharmacy
/hen payment is to be made to the Member, be sure to include Member's complete address.
/hen pharmacy is Non Participating, be sure to include Member's complete address.

SCRIPTION INFORMATION SECTION:

ray shaded area is for Blue Shield use only. Do not fill in.

etric Quantity – the number of units dispensed; i.e., 10 cc, 100 tablets, etc

efill – Indicate the number of times the prescription has been refilled Enter "0" if it is the original prescription.

ational Drug Code – ONLY LEGEND DRUGS ELIGIBLE FOR BENEFITS If drug dispensed has not been assigned a National Drug Code, leave this blank and enter a complete description in the space below the drug code block

ompound – check this box if prescription dispensed was a compounded drug. List all components of a compounded prescription in the area below "CMPD" box.

roduct Cost (Acquisition Cost) – actual invoice cost of drug dispensed (including trade discounts but not cash discounts) to your pharmacy or to the organization or its affiliates with which the pharmacy is associated, whichever is less.

harmacy Charge (Professional Fee) – PARTICIPATING PHARMACY ONLY – current professional fee payable to Texas Blue Shield Participating Pharmacies for pharmaceutical services is $2.00.

o-Pay or Deductible – the co-pay (deductible) amount is $2.00 for each prescription.

mount Due – add total prescription charge to member (acquisition cost + professional fee) less the co pay amount

Claim Forms

The payment of a drug claim by Blue Shield of Texas is dependent upon the information shown on the claim form. This form has been designed to provide rapid reimbursement and a minimum of paper work for you. Your attention is directed to our request that the entries by carefully handwritten, which will expedite claims payment and minimize delay of claims payment. The data is used to determine such items as contract eligibility, drugs cost and utilization and is, consequently, vital to the processing of a claim.

There is one type claim form. #304

When payment is due to the Pharmacy or Member, this claim form is used.

The use and completion of the claim form is dependent upon several factors. In the following discussion, reference to a "pharmacy" should be read as "pharmacy (or provider)."

1. PRESCRIPTION DRUG PROGRAM CLAIMS FORM #304

When a participating pharmacy is requesting payment for a prescription drug, this claim form should be completed according to the instructions listed on the reverse side of the claim form.

Whenever a participating pharmacy dispenses a "covered" drug, the recipient of that drug is responsible ONLY for the co-payment amount. Once the pharmacy submits a claim to Blue Shield, the balance due (Acquisition Cost and Professional Fee—Co-payment Amount) is paid directly to that PHARMACY, NOT TO THE RECIPIENT.

**The claim form is always completed in duplicate.

** THE FIRST COPY is retained by the Pharmacy for record purposes. This claim form serves a dual purpose in that it can be used for both Pay Pharmacy and Pay Member.

** THE SECOND COPY is sent to Blue Shield of Texas. The members' name, group, and I.D. numbers may be obtained from the paper or plastic I.D. card. With the plastic I.D. card, any type of imprinter may be used to imprint this information on the form. Also, the pharmacy's I.D. information may be imprinted on the claim form by using your plastic I.D. card with an imprinter or by printing this information.

PAYMENT TO SUBSCRIBER—CLAIM FORM #304

Form #304 is also used when payment is due to the member. This form should be used when a "covered" drug(s) is dispensed by a

a. *Non-participating pharmacy*, or an

b. *Out-of-state pharmacy*, or, under certain conditions, by a

c. *Participating pharmacy.*

Once the claim is processed by Blue Shield of Texas and is found to be valid, payment for the claim will be sent directly to the subscriber.

Payment is due to the member when the subscriber has already paid the pharmacy in full for his prescription.

The form is always completed in duplicate.

* THE FIRST COPY is retained by the subscriber for record purposes.

* THE SECOND COPY is sent to Blue Shield of Texas.

The subscriber should carefully print the member's name, address, certificate and group numbers; the patient's name, age and relationship to the member must also be included. The subscriber must request the Pharmacist to complete that portion of the claim form so denoted. IMPORTANT: The claim form *must* be signed by the subscriber and the pharmacist. If an imprinter is available, the plastic ID card may be used to give the member's name, group and certificate number. The address will need to be written in when payment is being made to subscriber.

a. *Non-participating Pharmacy*

When an eligible subscriber receives services from a non-participating pharmacy, Blue Shield of Texas will pay the subscriber 75% of the pharmacy's Usual and Customary charge after first deducting the co-payment liability of the patient.

EXAMPLE: If a non-participating pharmacy charges a Usual and Customary fee of $8.00 for certain "covered" drugs, the reimbursement to the subscriber would be determined as follows, assuming the co-payment is $2.00.

Charge	$8.00
Less Co-Payment Amount	2.00
	6.00
Multiplied by 75%	.75
Payment to Subscriber	$4.50

b. *Out-of-State Pharmacy*

When an eligible subscriber receives services from an out-of-state pharmacy, Blue Shield of Texas will pay the subscriber 100% of the pharmacy's Usual and Customary charge less the co-pay amount.

EXAMPLE: The out-of-state pharmacy's Usual and Customary charge for a certain prescription is $6.00. The reimbursement to the subscriber would be as follows:

Usual and Customary Charge	$6.00
Less Co-Payment Amount	2.00
Amount Due Subscriber	$4.00

c. *Participating Pharmacy*

IF a participating pharmacy is uncertain about a patient's drug eligibility coverage, the subscriber should be questioned accordingly. If after questioning, there is still an uncertainty, the subscriber will be charged the full amount for the drug and the pharmacy should assist in filling out a claim form. It is important that the participating pharmacy denote his assigned Blue Shield account number in the space provided on the claim form.

When Blue Shield of Texas audits the claim and determines that the subscriber is indeed eligible, the subscriber would then be reimbursed for 100% of the pharmacy's charge after deduction of the co-payment.

Additionally, the pharmacy's charge will be determined in a manner identical to a Due Pharmacy claim schedule, i.e., (Acquisition Cost + Professional Fee).

One example of the above situation would be when a subscriber is covered but has not yet received his I.D. card.

Filling Out The Claim Form

The subscriber should fill out the left portion of the form and then have the Pharmacist fill out his portion.

Blue Shield of Texas Form Letter, etc.

The subscriber and the pharmacist then sign the form prior to submitting it to Blue Shield of Texas. Your plastic pharmacy I.D. card along with the subscriber's plastic I.D. card may be used for identification section of form by using an imprinter.

EXAMPLE OF A SUBSCRIBER CLAIM

Patient Mary Doe (spouse of member John Doe) takes one prescription to a pharmacy. After filling the prescription the Pharmacist determines the charges, collects the appropriate amount from the subscriber, and assists in filling out the claim form.

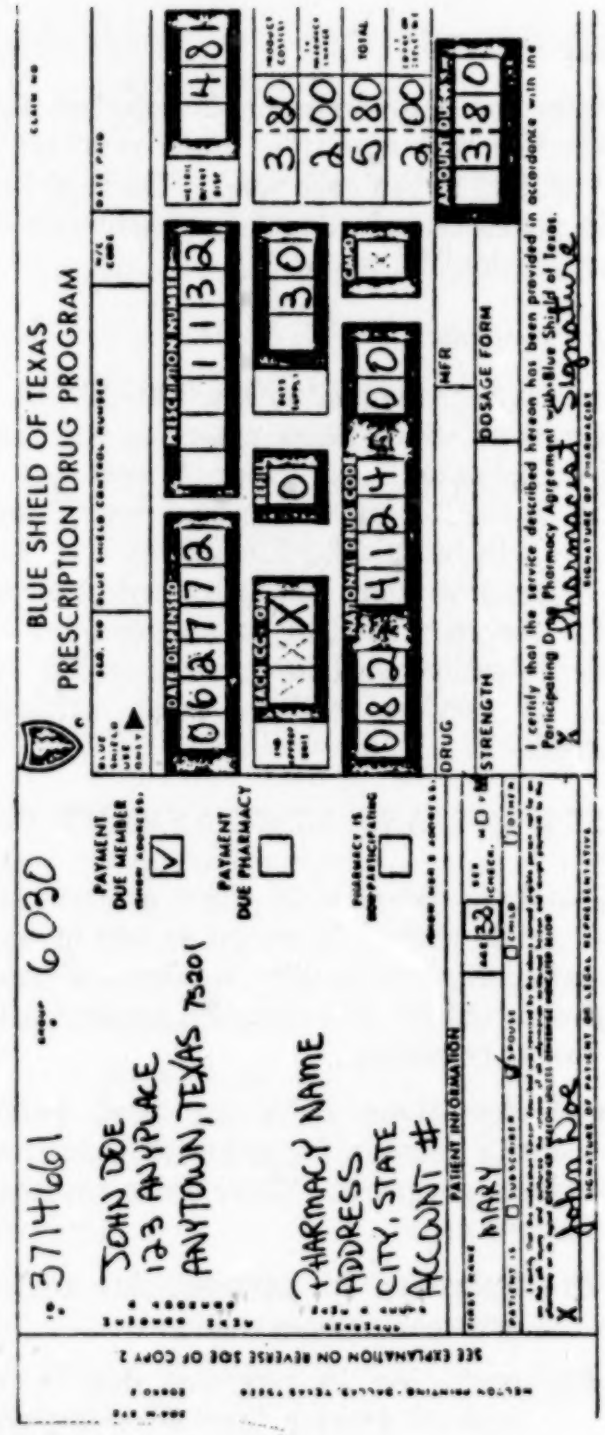
* The following date and example is for illustration only and does not intend any actual suggested prescriptions or costs.

Example

Prescription No. 1	Prescription No. is 1132 Original (as opposed to being a refill). 48 capsules of Cyclospasmol—200 mg.

All of the information required for completion of a "Payment to Pharmacy claim" is needed. In addition, please check the Payment Due Member box. If box is not checked and the claim is received from a participating pharmacy, payment will be sent to the pharmacy. Never file a claim for the payment to be sent to subscriber, unless the member has paid the charge in full and there is reasonable doubt of eligibility. (See Paragraph C, under Payment To Subscriber—Claim Form #304). *Always give member's address when filing a subscriber claim.*

Blue Shield of Texas Form Letter, etc.



Reject Codes

When a claim for a prescription is rejected, the reason for this rejection will appear on your remittance advice (payment) mailed to you each week. The reject codes can be found in your manual (See Adjustment and Non-Payment Codes, Section V).

Good Faith Provision

If a pharmacist is presented with a Blue Shield of Texas identification card which bears a service code and group number that indicate Drug Program coverage, and, on the basis of that card renders contract benefit services in good faith, he will be paid for his services. If Blue Shield of Texas determines that the I.D. card was not valid, payment for that service will be accompanied by notice that the identification card in question is not valid, and that claims for services rendered after notification will not be honored.

ADJUSTMENT AND NON-PAYMENT CODES

Code 22—No drug coverage in effect on date of service. Possible change in group or use of an identification card no longer in effect. Future claims submitted for this contract number will be subject to rejection.

Adjustment Codes—these codes are used primarily to identify reasons for payment reductions in the pricing programs. These codes and their explanations are:

(a) 01—Reduction in payment due to invalid or erroneous co-pay amount.

(b) 02—Reduction in payment due to requested amount greater than allowed payment.

(c) 03—Reduction in payment resulting from subscriber liability.

Non-Payment (N.P.) Codes—the following codes indicate various reasons why no payment is being made on this particular claim.

(a) 04—No contract in effect on date of service.

(b) 50—Duplicate of prior claim.

(c) 51—Duplicate of rejected claim.

(d) 54—Prescription drugs.

(e) 59—Drug Code indicates ineligible prescription drug program service.

(f) 92—This contract previously flagged as "22"—contract no longer eligible for prescription drug benefits.

MISCELLANEOUS INFORMATION

Ordering Forms

Prescription Drug Program Claims Form #304 will be supplied by Blue Cross and Blue Shield for use by the Participating Pharmacy to submit claims for payment in the Prescription Drug Program. You may obtain these forms by mailing your request to:

Blue Cross and Blue Shield
P. O. Box 22284
Dallas, Texas 75201

For Information

Claims will be processed in the Blue Shield Dallas Office, however, some information will be available in our local offices. A listing of these offices is on Page V-4. If you need information from the Dallas Office, write Texas Blue

Cross and Blue Shield or phone this Dallas number, 741-3761, Area Code 214, and ask for the appropriate extension.

Eligibility
Subscribers Accounts Dept ..... Ext. 305

Claims Reporting and Payments
Blue Shield Claims Section ..... Ext. 513
LTV Claims Section ..... Ext. 465

Professional Questions
Medical Division ..... Ext. 228

Acquisition Cost or Audit Information
Comptroller Department ..... Ext. 321

When calling about a specific claim, please have available the patient's identification number and any other pertinent information relating to that claim.

Advertising

The Participating Pharmacy agrees not to engage in any advertising relative to the Blue Shield Prescription Drug Program without prior approval of Texas Blue Shield. Blue Shield will supply window decals to identify Participating Pharmacies. The decals will be 6" x 8".

Reproduction of four-color window decal — shown actual size.

BLUE SHIELD

GROUP LIFE & HEALTH INSURANCE CO.

PARTICIPATING PHARMACY

An affiliate of

BLUE CROSS of Texas

Blue Shield of Texas Form Letter, etc.

HOME OFFICE: Main at North Central, Dallas, Texas 75222
741-3761

18 DISTRICT OFFICES TO SERVE YOU

Abilene 677-2671
Suite 206, Bank of Commerce Bldg.
Abilene, Texas 79605

Amarillo 372-1238
528 Amarillo Petroleum Bldg.
Amarillo, Texas 79101

Austin 452-0661
6225 U.S. Hwy. 290 East
Austin, Texas 78723

Beaumont 832-2589
1101 Beaumont Savings Bldg.
Beaumont, Texas 77701

Corpus Christi 882-5659
Guaranty Bank Plaza
726 Leopard Street
Corpus Christi, Texas 78401

El Paso 533-5525
1008 El Paso Natl. Bank Bldg.
El Paso, Texas 79901

Fort Worth 335-9315
507 Continental Life Bldg.
Fort Worth, Texas 76102

Harlingen 423-0474
Harlingen Natl. Bank Bldg.
Harlingen, Texas 78550

Houston 526-4962
5619 Fannin St.
Houston, Texas 77004

Longview 753-0311
425 First Natl. Bank Bldg.
Longview, Texas 75601

Lubbock 763-7094
Suite 211, Court Place Bldg.
Lubbock, Texas 79408

Lufkin 632-6605
606 East Lufkin Avenue
Home Savings & Loan Bldg.
Lufkin, Texas 75901

Midland 684-6644
210 First Savings & Loan Bldg.
Midland, Texas 79701

San Angelo 653-2951
San Angelo Natl. Bank Bldg., Suite 205
San Angelo, Texas 76901

San Antonio 342-9358
Exchange Plaza Bldg.
8010 Vantage
San Antonio, Texas 78230

Tyler 592-7321
East Texas Savings & Loan Bldg.
Room 201
Tyler, Texas 75701

Waco 772-7200
6501 Sanger, Suite 18
Waco, Texas 76710

Wichita Falls 723-8197
712 First Wichita Natl. Bank Bldg.
Wichita Falls, Texas 76301

Blue Shield of Texas Form Letter, etc.

Blue Shield
GROUP LIFE & HEALTH INSURANCE CO

PARTICIPATING
PHARMACY

An Affiliate of
Blue Cross of Texas

LETTER FROM ERNEST A. MAXWELL TO THE SOMMERS DRUG COMPANY, DATED OCTOBER 9, 1974 ("EXHIBIT 4" TO DEPOSITION OF JUDITH M. JOHNSON, NOVEMBER 20, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

October 9, 1974

Sommers Drug Company
3130 East Houston
San Antonio, Texas

Gentlemen:

For several years, Blue Shield of Texas has offered a Prepaid Prescription Drug Program which we plan to expand. The following paragraphs generally outline the benefits offered to participating pharmacies under this Program.

Under this Program the benefits to a participating pharmacy are the cost of a drug dispensed to an eligible employee, plus a dispensing fee of $2.00. The first $2.00 of drug cost is paid by the employee at the time the prescription is filled; Texas Blue Cross and Blue Shield will pay the remaining drug cost plus a dispensing fee of $2.00. The employee is required to present an Identification Card which will prove his eligibility.

Only those drugs which under Federal Law are required to bear the legend: "Caution: Federal Law prohibits dispensing without a prescription" are covered under this program. Excluded is any drug whose cost is less than $2.00, contraceptive drugs, and drugs for which no charge is customarily made. The limit on quantity is a 34-day supply of a covered drug except in the case of natural thyroid products or nitroglycerin, a limit of 100 unit doses.

Letter From Ernest A. Maxwell

You may participate in this Program by completing both of the attached Participating Drug Pharmacy Agreements and mailing them to Blue Cross and Blue Shield of Texas, P.O. Box 22001, Dallas, Texas 75222. One executed agreement will be returned to you. In completing this form, be sure that all requested information is given. Each corporate or individual owner of a pharmacy or pharmacies must complete a Participating Agreement in order to participate.

If you or your corporation own multiple pharmacies and you wish your checks sent to a central billing office, only one Agreement should be completed. Place the name of your participating pharmacy and the billing address in the spaces provided. On a separate sheet of paper, list the address of each pharmacy and permit number and list the names of the pharmacists employed at each store location.

When we receive the Participating Agreements we will send you a window decal, claim forms, identification card and a manual which outlines the benefits under this Program and gives complete instructions on how to complete the claim form. We look forward to your wholehearted participation in this Prepaid Prescription Drug Program.

Sincerely,

/s/ Ernest A. Maxwell, M.D.
ERNEST A. MAXWELL, M.D.
Vice President, Medical Director

EAM:jc
Enclosure

LETTER FROM JUDY JOHNSON TO PATTS DRUG STORE, DATED DECEMBER 20, 1974 ("EXHIBIT 7" TO DEPOSITION OF JUDITH M. JOHNSON, NOVEMBER 20, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

BLUE SHIELD OF TEXAS

[LOGO]

Ernest A. Maxwell, M.D.
Vice President, Medical Director

Post Office Box 22001
Dallas, Texas 75222
214/741-8751

December 30, 1974

Patts Drug Store
150 Terrell Plaza
San Antonio, Texas

Gentlemen:

Thank you for your interest in the Prepaid Prescription Drug Program and your request to participate.

You may participate in this program by completing the enclosed Participating Drug Pharmacy Agreements and mailing them to Blue Cross and Blue Shield of Texas, P.O. Box 22001, Dallas, Texas 75222. One executed agreement will be returned to you. In completing this form, be sure that all requested information is given. Each corporate or individual owner of a pharmacy or pharmacies must complete a Participating Agreement in order to participate.

If you want your checks sent to a central billing address, only one set of agreements should be completed. Place

the name of your pharmacy and the billing address in the spaces provided, and on a separate sheet of paper, list the address of each pharmacy with its permit number and the names of the pharmacists employed at each store location. However, if you have several stores and want each store to have its own billing address and number, we will be glad to send as many additional copies of the contract as you need.

When we receive the Participating Agreements, we will send a window decal, claim forms, identification card, and a manual which outlines the benefits under this program and gives complete instructions on how to complete the claim form.

We look forward to your wholehearted participation in the Prepaid Prescription Drug Program. If you have any questions or comments, please feel free to contact us.

Sincerely,

/s/ Judy Johnson
JUDY JOHNSON, Assistant to the
Vice President, Medical Director

JJ:cw

enclosures

I do not choose to participate. Your fee allowed is wholly inadequate and does not take into consideration the different services which each individual pharmacy perform. Furthermore, the setting of [illegible] the pharmacies involved, is both capricious and inconsiderate and I feel entirely unfair to the pharmacist involved.

/s/ Albert Papa
Owner
Patts Drug #2

MEMORANDUM FROM DAVID THIGPEN TO RAY PACE, DATED NOVEMBER 19, 1974 ("EXHIBIT 12" TO DEPOSITION OF JUDITH M. JOHNSON, NOVEMBER 20, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

BLUE CROSS AND BLUE SHIELD OF TEXAS

INTER-OFFICE CORRESPONDENCE

Date: 11-19-74

To: Dallas—Ray Pace

Dept: Director of Alternative Delivery Systems

From: David Thigpen

Dept: San Antonio

Subject: RE: Sommers Drug Stores
Effective Nov. 18

Message:

Sommers Drug Store will be a provider under our Drug Program. They would like for us to issue one provider number with a suffix for each store. All of the stores locations will file their claims with Sommers main office and Sommers main office will bill us and we will make a payment to the Sommers main office.

As you know this account was very important for our Drug Program. Please extend my thanks to Judy Johnson.

DT:lw

To Judy Johnson 11-21-74

MEMORANDUM FROM DAVID THIGPEN TO JUDY JOHNSON, DATED NOVEMBER 19, 1974 ("EXHIBIT 13" TO DEPOSITION OF JUDITH M. JOHNSON, NOVEMBER 20, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

BLUE CROSS AND BLUE SHIELD OF TEXAS

INTER-OFFICE CORRESPONDENCE

Date: 11-19-74

To: Dallas—Judy Johnson

Dept: Medical Department

From: David Thigpen

Dept: San Antonio

Subject: RE: Sommers Drug Store

Message:

This large drug chain has agreed to join our drug program November 18.

Our entire Foundation Program would not have been successful without them and I want to thank you for all of your help in securing this contract.

DT:lw

PARTICIPATING DRUG PHARMACY AGREEMENT BETWEEN GROUP LIFE AND HEALTH INSURANCE COMPANY AND WALGREEN, INC./TEXAS, DATED JANUARY 27, 1970 ("EXHIBIT 19" TO DEPOSITION OF JUDITH M. JOHNSON, NOVEMBER 20, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

PARTICIPATING DRUG PHARMACY AGREEMENT

between

GROUP LIFE & HEALTH INSURANCE COMPANY

(Herein called Blue Shield)

Dallas, Texas

and

WALGREEN INC./TEXAS

(Herein called the Participating Pharmacy)

Retail Drugs
(Type of Organization)

Billing Address: 4300 Peterson Ave., Chicago, Ill. 60646
(Address)

Pharmacy Permit No. ———

1. The Participating Pharmacy agrees that all pharmacists dispensing drugs in its behalf are to be considered participating pharmacists. The pharmacists currently employed by the Participating Pharmacy are:

Participating Drug Pharmacy Agreement (Walgreen)

Name	License No.
See list attached	———
———	———
———	———
———	———
———	———

2. Blue Shield agrees to provide the Participating Pharmacy with a manual which will stipulate the drugs for which benefits are available and drug deductible applicable to each person to whom drugs are to be dispensed under Section 3 of this agreement, and in which identification codes for certain of the drugs for which benefits are provided will be stipulated. Blue Shield agrees to provide the participating pharmacy with claim forms for payment in accordance with Section 3 of this participating agreement. The Participating Pharmacy agrees to complete all information required on the claim form, to retain a copy as a permanent record and to submit the original to Blue Shield.

3. The Participating Pharmacy shall dispense drugs to Subscribers who are covered under prescription drug expense contracts underwritten by Blue Shield, in accordance with the terms of such contracts as described in the Texas Blue Shield Pharmacy Manual at the time of service.

4. The Subscriber will pay to the Participating Pharmacy for each dispensed drug an amount not to exceed the required drug deductible stated in the manual for his group at the time the drug is dispensed. Except for dispensed drugs whose usual and customary charge is less than the drug deductible for the participant's

group as stated in the manual, Blue Shield agrees to pay, for each drug provided under Section 3, above, of this agreement, an amount equal to the total of the acquisition cost for such drug plus a professional dispensing fee of $2.00 less the applicable deductible. Except for dispensed drugs whose usual and customary charge is less than the drug deductible for the participant's group stated in the manual, the Participating Pharmacy agrees to accept as full payment for each drug provided under Section 3, above, of this agreement, an amount equal to the total of the acquisition cost for such drug plus the professional dispensing fee of $2.00.

Acquisition cost shall be the actual invoice cost to the Participating Pharmacy or to the company, organization or its affiliates with which the Participating Pharmacy is associated, whichever is less. Actual invoice cost shall include and reflect, with the exception of cash discounts, all trade and quantity discounts, rebates and price concessions, if any, granted by the supplier, wholesaler, or manufacturer to the Participating Pharmacy or to the company or organization with whom the Participating Pharmacy is associated.

5. The Participating Pharmacy agrees to maintain all business records supporting its acquisition cost of all drugs. The Participating Pharmacy agrees that Blue Shield shall have the right to inspect all claims forms and records necessary to establish compliance with this agreement at any time during regular business hours. The Participating Pharmacy agrees to furnish Blue Shield within fifteen (15) days, after the date of receipt of a written request from Blue Shield, with a copy of the drug purchase invoice showing the acquisition cost to the Participating Pharmacy as hereinabove computed.

6. The Participating Pharmacy shall perform all professional and other services under this agreement as an independent contractor and shall be free to exercise its own judgment on all questions of professional practice. Blue Shield is the underwriter of the insurance protection only. The Participating Pharmacy shall not be liable for any claim, injury, demand or judgment based upon contract, tort or other grounds (including warranty or merchantability) arising out of the sale, compounding, dispensing, manufacturing or use of any prescription drug service dispensed by the Participating Pharmacy pursuant to this agreement.

7. The Participating Pharmacy agrees not to engage in any advertising relative to Blue Shield prescription drug expense contracts without prior approval of Blue Shield.

8. This agreement may be terminated at any time by either party by giving at least fifteen (15) days prior written notice to the other party.

GROUP LIFE & HEALTH
INSURANCE COMPANY

By /s/ Tom L. Beauchamp, Jr.
President

Dated at Dallas, Texas this
27th day of January, 1970.

_____

By /s/ Joel H. Levin,
Title: Asst. Sec'y

Dated at ———, Texas this
—— day of ———, 19—.

Participating Drug Pharmacy Agreement (Walgreen)

Internal Revenue Employer Identification No. 36-1924031

or

If you do not have a Tax No.,
your Social Security No. ————————.

			Pharmacy Permit No.		
Walgreen	Drug	Store	320	2582	1725 Pacific, Dallas 75201
"	"	"	281	2583	175 Camino So. Sh. Ctr., Houston
"	"	"	454	2584	9520 Homestead, Houston 77016
"	"	"	462	2587	203 Sharpstown Ctr., Houston 77036
"	"	"	458	2585	8540 Long Point Rd., Houston 77055
"	"	"	471	9554	3200 Main, Houston 77002
"	"	"	475	2586	13345 North Shore Dr., Houston 77015
"	"	"	481	2588	2946 S. Shepherd, Houston 77006
"	"	"	794	17543	945 E. Shaw, Pasadena 77502
"	"	"	815	2591	435 Proctor St., Port Arthur 77640
"	"	"	877	2592	3638 Fredericksburg Dr., San Antonio 78201
"	"	"	878	2594	616 S.W. Military Dr., San Antonio 78221
"	"	"	881	2595	260 Mall N. Star Sh. Ctr., San Antonio 78216
"	"	"	883	2593	139 Walgreen Plaza, San Antonio 78237

MEMORANDUM ENTITLED "SPECIAL PLAN MEETINGS: AUTO PRESCRIPTION DRUG PROGRAM" ("EXHIBIT 23" TO DEPOSITION OF JUDITH M. JOHNSON, NOVEMBER 20, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

———

SPECIAL PLAN MEETINGS

AUTO PRESCRIPTION DRUG PROGRAM

WASHINGTON, D.C.
April 22, 1969

ATLANTA, GEORGIA
April 24, 1969

SAN FRANCISCO, CALIFORNIA
April 29, 1969

CHICAGO, ILLINOIS
May 1, 1969

INTRODUCTION

The 1967 Auto Health Care Settlement provides for implementation of a *service* benefit prescription drug program with *participating* pharmacies effective October 1, 1969. In order for Plans to be eligible for participation, complete conformance with the specifications is required. The primary purpose of this series of meetings is to:

1. Review and explain the drug program specifications.
2. Review Participating Plan requirements and discuss solutions to specific Local Plan problems.
3. Discuss administrative details.

Memorandum—Auto Prescription Drug Program

TABLE OF CONTENTS

Memorandum—Auto Prescription Drug Program

MEETING AGENDA

8:30	Registration
9:00	Introduction and Orientation
9:30	Workshop Seminars (coffee and rolls will be served)
11:00	Workshop Seminars
12:30	Lunch
2:00	Workshop Seminars
3:30	Summary and Closing Remarks
4:00	Adjournment

Workshop Seminars

Three distinct Workshop Seminars will be held during each time period. They are:

—Benefit Specifications

—Administrative Details and Operational Procedures

—Rating and Data Requirements

Assignment to each Workshop Seminar session will be made by the number on each attendee's name tag. By rotating at each time period, everyone will have the opportunity to participate in all of the Workshop Seminars.

AUTO PRESCRIPTION DRUG PROGRAM

National Implementation Timetable of Critical Tasks

Task	Completion Date
1. Complete Administrative Manual Section 4 and distribute to Participating Plans.	5/1/69
2. Approval and signing of the Master Group Operating Addendum on Drugs.	5/1/69
3. Determine Drug Program Statistical Data Requirements and communicate same to Participating Plans.	5/1/69

Task	Completion Date
4. Hold Regional Drug Meetings to explain details of the drug specifications and provide operational guidelines.	5/1/69
5. Follow up with Plans to ensure that certificate filings have been made.	6/1/69
6. Signing of Participating Plan Agreement Addendum on Drugs.	6/1/69
7. Report to Management and Union of each Auto Account the status of written agreements with the individual Plans, and alternate arrangements which may be necessary to achieve the level of benefits specified by the National Account Program.	7/1/69
8. Secure Participating Plan rates for the Drug Program. (Not applicable to Ford Motor Company.)	7/1/69
9. Develop employee literature for distribution nationally.	7/15/69
10. Obtain results of each Plans' Participating Pharmacy campaigns. (It is estimated these campaigns will run for a six (6) week period.)	8/1/69
11. Follow-up with Plans to determine the readiness of their claims handling system.	8/1/69
12. If necessary, issuance of identification cards reflecting drug coverage.	9/1/69
13. Distribution of employee literature.	9/1/69
14. Effective date of the Service Benefit Prescription Drug Program.	10/1/69

Draft: 4-15-69

AUTO NATIONAL ACCOUNT PROGAM ADMINISTRATIVE MANUAL

PART 4

SERVICE BENEFIT PRESCRIPTION DRUG PROGRAM

I. DEFINITIONS

A. *Local Plan*

Any Blue Cross and/or Blue Shield Plan through which a member is enrolled for a Service Benefit Prescription Drug Program as a part of the Auto National Account Program.

B. *Local Plan Area*

The geographic area in which a Local Plan ordinarily offers coverage.

C. *Physician*

One who is legally qualified and licensed to practice medicine and perform surgery at the time and place services are rendered (as indicated in Part 3 of this Manual); and for the purpose of this program a doctor of medicine, a doctor of osteopathy or a Podiatrist who is legally licensed to prescribe medications within the scope of that license.

D. *Dentist*

A doctor of dental surgery or a doctor of dental medicine legally licensed to prescribe medications within the scope of that license.

E. *Prescription Legend Drug*

Any medicinal substance—the label of which, under the Federal Food, Drug, and Cosmetic Act is required to bear the legend: "Caution: Federal Law prohibits dispensing without a prescription."

F. *Pharmacist*

A person licensed to dispense Prescription Legend Drugs under the laws of the State wherein he practices.

G. *Pharmacy*

A licensed establishment where Prescription Legend Drugs are dispensed by a Pharmacist.

H. *Provider*

A Pharmacy, Pharmacist, Physician, Dentist or any other person or organization legally licensed to dispense drugs.

I. *Prescription Order*

A written or oral request by a Physician or Dentist for a single Prescription Legend Drug.

J. *Covered Drug*

Any Prescription Legend Drug or any medication compounded by the Provider which contains a Prescription Legend Drug (except contraceptive medications) when ordered by a Physician or a Dentist for which a written Prescription Order is customarily prepared, a separate charge of $2.00 or more is customarily made and which is not entirely consumed at the time and place of the Prescription Order, and injectable insulin.

Compounded medications which contain a Prescription Legend Drug are not required to bear the legend "Caution: Federal Law prohibits dispensing without a prescription." However, when a Provider prepares, pursuant to a Prescription Order, a compounded medication in which at least one ingredient is a Prescription Legend Drug, the compounded medication is a Covered Drug if it meets the other requirements in the definition.

Any drug for which the Provider customarily charges less than $2.00 is *not* a Covered Drug under the program. Injectable insulin is not a Prescription Legend Drug and does not require a Prescription Order.

K. *Co-Payment Amount*

Any amount not to exceed $2.00 to be paid by a member for each separate Prescription Order and refill of a Covered Drug.

A member will not be required to pay a Co-Payment Amount of more than $2.00 for any Covered Drug but could be charged a lesser amount by the Provider. In all cases a Co-Payment Amount of $2.00 will be used by a Local Plan in determining the benefit payment regardless of the amount actually paid by a member.

L. *Participating Contract*

The agreement entered into between a Local Plan and a Participating Provider which sets forth their respective rights and obligations.

M. *Participating Provider*

A Provider who has entered into a Participating Contract with a Local Plan to provide a Covered Drug at a cost to a member not to exceed the Co-Payment Amount of $2.00.

N. *Non-Participating Provider*

A Provider who has not entered into a Participating Contract with a Local Plan.

O. *Acquisition Cost*

The actual invoice cost of a Drug (with the exception of cash discounts, but including trade discounts) to the Provider or to the company, organization or its affiliates with which the Provider is associated, whichever is less.

This definition recognizes that the actual cost of a drug to certain large chain stores, hospitals, etc. is often less than the cost to other Providers. Consequently, the cost of the drug to the company or organization will be used rather than the cost to the establishment or individual actually dispensing the drug.

Cash discounts allow a reduction from invoice price for prompt payment. For example, 2/10 net 30 permits the invoice to be reduced by 2 percent if payment is made within 10 days. Cash discounts are *not* considered in determining the actual invoice cost.

Trade discounts allow reductions from invoice price without regard to date of payment. Discounts given for quantities purchased, or

for items purchased at a time other than when they are in high demand are examples of trade discounts. Trade discounts are considered in determining the actual invoice cost.

P. *Dispensing Fee*

An amount predetermined by a Local Plan to compensate a Provider for dispensing a Covered Drug.

Q. *Usual and Customary Charges*

The amount charged by: 1) a Participating Provider for injectable insulin; 2) a Non-Participating Provider for a Covered Drug; or 3) a Provider out of a Local Plan Area for a Covered Drug; not to exceed the maximum allowable amount as determined by a Local Plan.

R. *Prescription Charges*

For a Participating Provider, the Acquisition Cost plus the Dispensing Fee for a Covered Drug except for injectable insulin. In the case of injectable insulin the Usual and Customary Charge or the Acquisition Cost plus the Dispensing Fee, whichever is lower. For a Non-Participating Provider, the Usual and Customary Charge for a Covered Drug. For a Provider out of a Local Plan Area, the Usual and Customary Charge for a Covered Drug.

II. BENEFIT AND LIMITATIONS

Subject to the Exclusions in Section III, benefits shall be provided for Covered Drugs dispensed on and after

the effective date of the Program. It is the intent of this Program that the benefits shall be uniform for all members except in those instances where such might be contrary to the laws of the State in which the prescription is dispensed.

A. *Payment—In a Local Plan Area*

1. Participating Provider: A Local Plan will pay to a Participating Provider the Prescription Charges for each Covered Drug less the Co-Payment Amount of $2.00.

   Examples: (Other than the Co-Payment, all amounts are hypothetical)

Participating Provider
Prescription Legend Drug

Acquisition Cost	$7.50
Dispensing Fee	+1.75
Prescription Charges	$9.25
Less Co-Payment	−2.00
Payment to Provider	$7.25

Participating Provider
Injectable Insulin
(4 Vials of U-40 Insulin)

#1		#2	
Acquisition Cost	$4.00	Usual & Customary	$5.00
Dispensing Fee	+1.90		
Prescription Charges	$5.90	Prescription Charges	$5.00
Less Co-Payment	−2.00	Less Co-Payment	−2.00
Payment to Provider	$3.90	Payment to Provider	$3.00

In the example on injectable insulin, a Local Plan will pay a Participating Provider according to # 2 because the Usual and Customary Charge method results in a lower

Prescription Charge than does the Acquisition Cost plus the Dispensing Fee method.

2. Non-Participating Provider: A Local Plan will pay to a member 75% of the remainder of the Prescription Charges of a Non-Participating Provider for each Covered Drug after deducting the Co-Payment Amount of $2.00.

   Example: (Other than the Co-Payment, all amounts are hypothetical)

Non-Participating Provider

Usual & Customary Charge	$6.40
Less Co-Payment	−2.00
	$4.40
Percent of Remainder	× .75
Benefit Payment	$3.30

B. *Payment—Out of a Local Plan Area*

When services are received out of a Local Plan Area payment to the member will be 100% of the remainder of the Prescription Charges for each Covered Drug after deducting the Co-Payment Amount of $2.00.

Provider Out of a Local Plan Area

Usual & Customary Charge	$6.40
Less Co-Payment	−2.00
	$4.40
Percent of Remainder	×1.00
Benefit Payment	$4.40

III. BENEFIT EXCLUSIONS

A. Drugs for which a Provider customarily charges less than $2.00.

Memorandum—Auto Prescription Drug Program

B. Drugs dispensed prior to the effective date of this Program.

C. Any charge for non-legend drugs and medications other than injectable insulin.

D. Any charge for administration of Prescription Legend Drugs and injectable insulin.

E. Any charge for a contraceptive medication regardless of its intended use.

F. Any charge for devices or appliances (hypodermic needles, syringes, support garments and other non-medicinal substances) regardless of their intended use.

G. Services for which benefits are applicable under Workmen's Compensation Laws according to the provisions of the Workmen's Compensation portion, Part 5 of this manual.

H. In the event of any payment for services under this program, the Plan shall be subrogated to all the Member's rights of recovery therefor against any person or organization except against insurers on policies of insurance issued to and in the name of the Subscriber, and the Member shall execute and deliver such instruments and papers and do whatever else is necessary to secure such rights according to the Provisions of the subrogation portion, Part 5 of this Manual.

I. Services to the extent they are payable under Title XVIII of the Social Security Amendments of 1965 (Public Law 89-97, 89th Congress, First Session, as amended).

Memorandum—Auto Prescription Drug Program

J. Services to the extent they are payable under any health care program supported in whole or in part by funds of the Federal Government or any state or political subdivision thereof are excluded as benefits except Title XIX Social Security Amendments of 1965 (Public Law 89-97, 89th Congress, First Session, as amended).

K. The charge for medications furnished on an in-patient or out-patient basis covered under any Blue Cross and/or Blue Shield contract, or another carrier providing group coverage for Prescription Legend Drugs or injectable insulin through a Coordination of Benefits provision.

L. The charge for more than a 34-day supply of medication, except that the Plan will cover 100 unit doses (tablet, capsule, etc.), of a natural thyroid product and 100 unit doses of nitroglycerine.

M. The charge for any prescription refill in excess of the number specified by the physician or any refill dispensed after one year from the physician's order.

Draft: 4-15-69

INFORMATION PERTAINING TO PART 4 of the ADMINISTRATIVE MANUAL

These guidelines developed for use by Participating Plans in administering the Service Benefit Prescription Drug Program, when finalized, will be included in Part 4 of the Administrative Manual, H.S.M.D., Auto National Account Program. The guidelines interpret and explain the benefits set forth in the specifications for the program and describe the regulations governing benefit payment. The purpose of this paper is to provide additional information about some of the interpretations, explanations and descriptions that are contained in the administrative guidelines.

1. *Acquisition Cost*

   Cash discounts will not be considered in determining the actual invoice cost of a drug. Cash discounts allow a reduction from invoice price for prompt payment. Cash discounts, when offered, are taken solely at the option of the Provider and the supply and intended use of his capital will be the primary factor influencing the taking of such discounts. A Provider may or may not choose to take advantage of a cash discount on any given invoice dependent upon his degree of liquidity. Some Providers, as a matter of practice, may never take cash discounts because similar or greater savings can be realized through other uses of their capital. To consider cash discounts in determining acquisition cost would, in effect, impose a penalty on the Provider who takes such discounts and could force an unnecessary change in his business practice.

Trade discounts will be considered in determining the actual invoice cost of a drug. Trade discounts allow reductions from invoice price without regard to date of payment. Discounts given for quantities purchased, or for items purchased at a time other than when they are in high demand are examples of trade discounts. As a rule, trade discounts are considerably greater than the usual 2 per cent discount offered for prompt payment.

A trade discount may or may not be specifically identified on an invoice but the invoice price will be affected by the discount. For example, a Provider might normally pay $10.00 for 100 units of drug "X", but be given a 10 per cent discount if he buys 500 units or more. If he makes such a quantity purchase he may receive an invoice which shows:

500 units of drug "X" @ $10.00/100 units =	$50.00
less discount of 10% =	5.00
Invoice Price =	$45.00

or he may receive an invoice which simply shows:

500 units of drug "X" @ $9.00/100 units = $45.00

In each case the invoice price is the same even though the trade discount is not specifically identified in the second instance.

Providers sometimes receive discounts in the form of cash rebates from a supplier based on the dollar volume purchased during a given period of time. While such "discounts" are not reflected in invoice prices they can be revealed through the knowledge and judgment applied during the auditing process. To the degree possible such rebates will be considered in the determination of acquisition cost.

2. *Covered Drug*

A compounded medication is a final dosage form produced by a Provider through combining or uniting two or more ingredients. When ordered by a Physician or a Dentist, and subject to the other pertinent requirements, any medication compounded by a Provider which contains a Prescription Legend Drug is a Covered Drug even though compounded medications are not required to bear the legend, "Caution: Federal Law prohibits dispensing without a prescription." A final dosage form produced by the simple act of dilution is not considered to be a compounded medication.

Injectable insulin is not a Prescription Legend Drug and does not require a Prescription Order.

A written, signed prescription order is not required for other than Class A narcotics. However, if a Prescription Order is transmitted in other than a written form, pharmacy laws require the Provider to immediately reduce the transmission to writing which has the effect of making all Prescription Orders written orders. The phrase ". . . for which written Prescription Order is customarily prepared . . ." is included in the administrative guidelines to preclude changes in patterns of care. Physicians frequently administer drugs in connection with medical care rendered in the home or office as do Dentists in relation to dental care. Such drugs are not dispensed by a Provider on the basis of a written Prescription Order being customarily prepared, and it is not the intent of the program to qualify them as a Covered Drug.

The phrase " . . . and which is not entirely consumed at the time and place of the Prescription Order,

. . ." is used in the administrative guidelines along with other parts of the definition of a Covered Drug to further support the same purpose for which ". . . a written Prescription Order is customarily prepared . . ." is used. The per dose cost of immunizations, antibiotics, diagnostics, allergens, etc., which Physicians frequently administer as a part of home or office medical care, is negligible. The greatest portion of the charge, if any, is for administration of the drug. To provide coverage for drugs which are entirely consumed at the time and place of the Prescription Order could create undesirable and inflationary patterns of care.

Any drug for which the Provider customarily charges less than $2.00 is not a Covered Drug. The Service Benefit Drug Program which is a part of the Auto National Account Program specifies members share in the cost of benefits by paying a Co-Payment Amount of $2.00 (This Co-Payment Amount is significantly greater than that recommended by Blue Shield-Blue Cross.) Recent studies show that prescription charges for slightly more than 15 per cent of the drugs dispensed in Michigan are less than $2.00. It is not the intent of the program that the members' Co-Payment obligation result in their paying more for drugs than they normally would have paid if they were not enrolled in the program. Since this possibility exists due to the $2.00 Co-Payment Amount of the program, drugs for which the Provider customarily charges less than $2.00 will be the responsibility of the member and not a liability of the program.

3. *Dispensing Fee*

Local Plans will establish and use pre-determined Dispensing Fee amounts in making benefit pay-

ments to Participating Providers. The Dispensing Fee is designed to compensate the Participating Provider for professional services and the other costs of doing business (e.g. rent, utilities, equipment, storage, packaging materials, sales tax, etc.). Local Plans may use a uniform Dispensing Fee for all Participating Providers in their Plan area or may vary the Dispensing Fee according to a categorization of Providers.

Initially, a uniform Dispensing Fee will have the characteristic of rewarding those Providers who operate more efficiently. And, in an overall sense, a uniform Dispensing Fee is reasonably equitable to all Providers. While there are variances in the elements that compromise the operating costs of Providers, there is also a certain equalizing effect when the consideration is return on investment.

The difference in pharmacists salaries, which constitutes a major portion of a Provider's overhead, can be used to illustrate the point. In metropolitan areas salaries are higher than those paid in outlying regions, but this difference in the cost of doing business is offset through the larger volume of business generated in metropolitan areas due to the greater concentration of population and Physicians. The cost of doing business is also affected by the range of services offered by the Provider. However, the independent Pharmacy which provides such services as home delivery, maintaining patient medication profiles and staying open 24 hours a day does not generally incur other costs such as warehousing which affect the large volume, chain store Provider.

Ultimately it appears there may be a need for refinement in the uniform Dispensing Fee method

of reimbursement in consideration of differences in the Providers' location and range of services offered, and in recognition of the desirability of incentives to encourage more efficient operations. At the present time, however, there is no meaningful way to measure the value of such differences or determine the affect of any incentive system. These issues will be continuously studied, and perhaps pilot incentive programs can be used, to arrive at the most effective method of Provider reimbursement.

4. *Prescription Legend Drug*

The word "State" is not included in the definition of a Prescription Legend Drug in order to ensure the greatest possible degree of uniformity in the benefits of the program. State laws may require a prescription for some drugs even though such drugs are not required to bear the legend, "Caution: Federal Law prohibits dispensing without a prescription." Such state laws are particularly applicable to narcotic agents which may be subject to abuse. For example, paregoric may not be dispensed in Michigan without a prescription, but it may be in most other areas. On the other hand, the F.D.A. has not recognized some drugs as having any therapeutic value, and will not permit them to be used outside the State in which they were developed. In Ohio, such a drug (purported to be a cancer cure) is available when dispensed with a prescription, but it cannot be purchased elsewhere. To include drugs which are subject to State, but not Federal, law as Covered Drugs would be discriminatory against some members enrolled in the program.

CERTIFICATE
DRAFT
April 14, 1969

(PLAN)

PRESCRIPTION DRUG GROUP BENEFIT PROGRAM

This Certificate, upon payment of the additional subscription rate, supplements the Certificates of (Plan) by adding prescription drug benefits hereunder. However, this Certificate is subject to all the terms and conditions of the (Plan) which this Certificate supplements, except as herein expressly otherwise provided.

In witness whereof (Plan) by their duly authorized agents have executed this Certificate.

Section I—ELIGIBILITY

Members eligible for benefits hereunder are those members eligible for benefits under the (Plan) Certificates which this Certificate supplements, subject to the following exceptions and limitations:

A. Persons covered under any "sponsored dependent" rider to the (Plan) Certificates are ineligible for benefits under this Certificate.

B. Retirees and their dependents and surviving spouses of employees, whether active or retired at date of death, and their dependents are ineligible for benefits under this Certificate.

Section II—DEFINITIONS

In addition to other definitions set forth in the (Plan) Certificates which this Certificate supplements and for the purpose of this Certificate only, the following terms shall have the following meanings:

A. "Covered Drugs" means any Prescription Legend Drug or injectable insulin when ordered by a Physician for which a written Prescription Order is customarily prepared, a separate charge of $2.00 or more is customarily made and which is not entirely consumed at the time and place of the Prescription Order, except as herein limited or excluded.

Compounded medications which contain a Prescription Legend Drug are not required to bear the legend: "Caution: Federal Law prohibits dispensing without a prescription". However, when a Provider prepares, pursuant to a Prescription Order, a compounded medication in which at least one ingredient is a Prescription Legend Drug, the compounded medication is a Covered Drug if it meets the other requirements in the definition. Injectable insulin is not a Prescription Legend Drug and does not require a Prescription Order.

B. "Member's Liability" means the amount of $2.00 to be paid by the member of each separate Prescription Order and refill for Covered Drugs toward the cost of each Covered Drug and each refill of a Covered Drug.

C. "Participating Provider" means a Provider who has entered into a participating contract with (Plan) to provide benefits under this Certificate.

D. "Non-participating Provider" means a Provider who has not entered into a participating contract with (Plan) .

E. "Pharmacy" means a licensed establishment where prescription drugs are dispensed by a pharmacist licensed under the laws of the State wherein the pharmacist practices.

F. "Prescription Legend Drug" means any medicinal substance—the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: "Caution: Federal Law prohibits dispensing without prescription".

G. "Prescription Order" is the request for medication by a Physician as defined in the (Plan) Certificate.

H. "Provider" means any Pharmacy, Physician, or any other person or organization legally licensed to dispense drugs.

Section III—BENEFITS PROVIDED

A. The Participating Provider will furnish Covered Drugs and will not make any charge or collect from the member any amount which exceeds the Member's Liability amount for Covered Drugs.

B. The member, upon submission of proof of payment acceptable to (Plan) shall be entitled to reimbursement from (Plan) for Covered Drugs obtained from a Non-participating Provider in an amount equal to 75% of the usual and customary charges as determined by (Plan) after the Member's Liability amount has been satisfied. For Covered Drugs obtained from a Provider located outside the (Plan) area, the member upon submission of proof of payment acceptable to (Plan) , shall be entitled to 100% of usual and customary charges or the

actual charges if less for Covered Drugs, as determined by (Plan) , less the Member's Liability amount.

Section IV—EXCLUSIONS

In addition to the exceptions, exclusions and limitations of the (Plan) Certificates, and Riders thereto, no benefits shall be payable hereunder for the following:

A. Any drug for which the Provider customarily charges less than $2.00.

B. Any charge for a contraceptive medication, even if such medication is a Prescription Legend Drug, and any charge for therapeutic devices or appliances (including but not by way of limitation, hypodermic needles, syringes, support garments, and other non-medical substances) regardless of their intended use.

C. Any charge for administration of a Prescription Legend Drug or injectable insulin.

D. The charge under any one prescription order for more than a 34 consecutive day supply of a medication, except that (Plan) will cover 100 unit doses (tablet, capsule, etc.) of a natural thyroid product and 100 unit doses of nitroglycerine.

E. The charge for any prescription refill in excess of the number specified by the Physician, or any refill dispensed after one year from the Physician's Order.

F. Covered Drugs for which no charge is customarily made to the member.

G. Covered Drugs dispensed to a member when benefits for Covered Drugs are provided under the (Plan) Certificates and Riders thereto.

H. Notwithstanding the provisions of any applicable Coordination of Benefits Program in effect as a rider to the (Plan) Certificate, benefits for Covered Drugs shall be provided, subject to the final determination of (Plan's) liability, whether primary-secondary. In no case will (Plan) make payment of an amount which when added to the amount paid by another Plan, exceed that which is provided by this Prescription Drug Group Benefit Program.

Section V—SUBSCRIPTION RATES

The Subscriber agrees to pay (Plan) monthly in advance unless otherwise provided, the applicable subscription rate for the coverage of this Certificate. The applicable rate payable at the time of issuance of this Certificate is indicated upon the Rate Schedule delivered to the Subscriber or his remitting agent contemporaneously herewith which is part hereof and receipt of which is acknowledged. The applicable rate is subject to adjustment from time to time according to the (Plan) merit rating program, and wherever applicable, the merit rating formula by the giving of thirty (30) days written notice to the Subscriber or his remitting agent. The Subscriber by acceptance hereof agrees that notice to the remitting agent of the amount of any such adjustments applicable to the group will be notice to the Subscriber of the amount applicable to him.

Section VI—GENERAL

A. In the event the subscriber shall become a Group Conversion subscriber, this (Plan) Prescription Group Drug Benefit Certificate shall be terminated without action on the part of (Plan) .

B. As a condition precedent to the approval of claims hereunder, or for any other reason, each member authorizes and directs any Provider who furnished benefits hereunder to make available to (Plan) information relating to all Prescription Orders, copies thereof and other records as needed by (Plan) .

C. The benefits under this Certificate shall be provided in the form of Service, and payment therefor by (Plan) shall constitute a complete discharge of the obligation of (Plan) to the extent of the service rendered in accordance with the terms and conditions of this Certificate. (Plan) does not undertake to supply a provider for the member.

D. (Plan) shall not be liable for any claim or demand for injury or damage arising out of in connection with the manufacturing, compounding, dispensing, or use of any Legend Drug whether or not covered under this Certificate.

E. (Plan) reserves the right to deny benefits for any drug prescribed or dispensed in a manner contrary to accepted medical or pharmaceutical practice.

AUDITING AND CONTROL

In Michigan, approximately 125 on-site audits of Providers will be performed each month by the equivalent of three full time field auditors. A minimum of 25 randomly selected prescriptions, from among those submitted during the most recent six month benefit payment period, will be audited for each Provider. Among the check list items to be audited are acquisition costs which will be verified by visual inspection of bottle sizes, purchase invoices and wholesaler or manufacturer billing statements. In addition, the actual prescription will also be audited to ascertain such facts as: the prescribed drug was dispensed in the quantity specified; the number of refill orders; and the prescription was issued to a person eligible for and enrolled under the Drug Program.

The Control Plan will assume responsibility for having audits conducted of chain store pharmacies operating in more than one Local Plan Area, and the results of these audits will be given to all involved Plans. The sole purpose of these audits will be to verify the actual acquisition cost only. Local Plans will be responsible for performing audits of individual Providers located in their area in relation to all other items of interest exclusive of acquisition cost.

Following is the outline used by Michigan Service Review Analysts in conducting Provider Audits.

MICHIGAN

ORIGINAL AUDIT

PRESCRIPTION DRUG PROGRAM

1. An advance letter must be sent seven to ten days prior to date of audit. A phone call may be substituted at the Service Analyst's discretion.
2. Deal with the owner, manager, or pharmacist in charge (not with just a clerk or a bookkeeper).
3. Introduce yourself as representing Blue Shield (show calling card) and refer to prior letter (copy in case file).
4. Check licensure:
   - A. Michigan State Pharmacy License for the facility.
   - B. State Registration number for pharmacist-on-duty.
5. Give manager a list of claims to be audited (in prescription number order). Request access to any and all records necessary to verify that the pharmacy has complied with all regulations. Sources include, but are not limited to:
   - A. Original copy of prescription or order (need not be signed by a physician).
   - B. Financial ledger (daily log book, etc.). Charge data frequently appears on prescription itself.
   - C. Invoices.
   - D. Pharmacy carbon copies of claims submitted.

6. Perform comparison audit (claims vs records):

   A. Patient, sex, relationship, age, etc.

      1. A Unifile (D1) transcript will be provided. The analyst must verify that the recipient of the drug (per the pharmacy prescription copy) is eligible for drug benefits.

      2. In the claims cycle, all eligibility verification will be done on a contract basis only.

   B. Prescription number and date.

   C. See copy of prescription. Need not be signed by a physician.

   D. Thirty-four day supply limit (with exception of natural thyroid products and nitroglycerine which may be dispensed in units of 100).

   E. Drug and quantity prescribed same as drug and quantity dispensed.

   F. Acquisition cost determination:

      1. A container should be seen for each drug claimed and the cost and size (50, 100, 500, etc.) noted. Cost data frequently appears on a container in stock.

      2. At least four invoices should be seen.

   G. Usual and customary charge should be determined for each claim checked to ascertain that the Provider customarily charges $2.00 or more for the items being checked. This can be done in several ways:

      1. Review prescription charges for a similar quantity of the same drug.

      2. Ask the pharmacist for "proof" of his usual fee schedule (a chart, something in writing, etc.) and have him price the drug step by step following his fee schedule.

      3. Review prescription charges (selected at random from store files) to verify a "fee schedule".

   H. The subscriber must never be charged more than $2.00.

   I. *At least four physicians* should be contacted to verify a prescription.

      1. Inform the pharmacist that such a contact will be made as part of routine procedure.

   J. It is not necessary to routinely interview a subscriber. However, certain circumstances may arise which could dictate such an interview (doctor denies writing prescription, name on prescription not an eligible recipient, doctor not contacted, etc.).

7. Disposition of Unfounded case:

   A. Fill out "Case Status Report" with appropriate disposition.

   B. No closing memo need be written.

   C. Indicate in Part II, A, number of claims reviewed.

8. Disposition of Founded case:

   A. Close as "Founded, major problem" under the following circumstances:

      1. Economic discrepancies of *any* amount are noted in *any* of the eighteen claims which are the result of "pharmacy routine".

2. "Pharmacy routine" may be determined in the following manners:

   a. Question the pharmacist: (e.g., Is this five cent acquisition cost overcharge due to mathematical error or is it due to rounding, container fee, etc. figured in most claims?)

   b. Review the pharmacy carbon copies of paid or unpaid claims.

   c. Review more invoices.

3. Drug benefits are provided to an ineligible recipient.

B. Close as "Founded, minor problem" under the following circumstances:

1. Economic discrepancies noted are *not* due to "pharmacy routine" but rather to "occasional human error".

2. Non-economic regulation violations are noted.

9. Resolution of Founded cases:

A. "Founded major problem"

1. Economic discrepancies—order refund audit.

2. Ineligible recipient:

   a. Determine relationship of subscriber to recipient.

   b. Profile contract number involved.

   c. Audit each drug claim paid to contract number involved.

   d. Refer case with all above data to Field Supervisor.

B. "Founded, minor problem": send appropriate letter and/or verbally notify pharmacy of discrepancies.

MICHIGAN

REFUND AUDIT

PRESCRIPTION DRUG PROGRAM

1. Notify pharmacy a refund audit will be done.
   a. Inform pharmacy that more time will be required than an original audit.
   b. Request a specific appointment time, preferably when the pharmacist will be free to work exclusively with the Service Analyst.
2. Claims to be selected (primarily an internal consideration):
   a. Amount of claims audited will depend on dollar volume paid to store:

Dollar Volume	(number of claims *not* including those in original audit)
0-3,000	25
4,000-6,000	75
7,000-10,000	100
10,000 +	200

   b. Select claims from 2-3 different months (the recommendations, in the closing of the original audit, should contain the exact number of claims and months to be included in the work-up).
3. Depending on the Service Analyst's knowledge of the case, only the specific problem noted in the original audit need be audited:
   a. If the refund audit is to determine Total Cost overcharge, there is no need to see each and every prescription, invoice, etc. However, "usual charge" data should be seen.

   b. If the refund audit is to determine Acquisition Cost overcharge and the Service Analyst is *certain* that costs on the bottle are accurate, there is no need to see each and every invoice.
   c. If the problem audited is not directly related to the actual prescription on file, there is no need to review each and every prescription.
   d. However, an occasional claim should be audited for all possible regulation violations.
4. Refund computation:
   a. Determine the "amount paid" to the pharmacy for the audit sample.
   b. Determine the "amount that should have been paid" per the audit.
   c. Determine the "percentage of error" by dividing the difference between a and b by a.
   d. Multiply the total paid to the pharmacy by c.
5. Inform the pharmacy of the results.
6. If the *pharmacy requests* the presence of a representative from the State Pharmaceutical Association during any or all phases of the audit procedure, inform the Field Supervisor and the Association will be contacted. After this initial contact, the Service Analyst will be responsible for dealing with the Association and the pharmacy.
7. In the event that the Association disagrees with our findings, or if the meeting between the three parties results in no refund, refer the case to the Field Supervisor.

8. A store audited for refund should be re-audited in 90 days.

9. If, during the course of the audit, the Service Analyst is certain that the problem originally noted is actually not "major" in scope, he may chose to terminate the review.

   a. Close the refund audit as unfounded.
   Write a closing memo.

   b. Do *not* change the status of the original audit.
   Include a copy of the refund audit closing memo.

NATIONAL ACCOUNT PROGRAM

PARTICIPATING PLAN AGREEMENT

AMENDMENT A

CHRYSLER CORPORATION

The National Account Program Participating Plan Agreement, notwithstanding what is contained to the contrary in Article I, is hereby Amended by addition of the following:

The Participating Plan hereby agrees to underwrite and service the Prescription Drug Program effective October 1, 1969, as set forth in Addendum No. 1 to the Master Group Operating Agreement. A copy of Addendum No. 1 to the Master Group Operating Agreement and Addendum No. 1 to Exhibit "A" is attached hereto and by reference made a part of this Amendment.

This Amendment to the Participating Plan Agreement shall be effective at 12:01 a.m., October 1, 1969, and shall continue in force and effect in accordance with the terms and conditions of the Participating Plan Agreement.

_____ (Plan)	Michigan Hospital Service
_____ (Name)	_____ (Name)
_____ (Title)	_____ (Title)
_____ (Plan)	Michigan Medical Service
_____ (Name)	_____ (Name)
_____ (Title)	_____ (Title)

Memorandum—Auto Prescription Drug Program

NATIONAL ACCOUNT PROGRAM

PARTICIPATING PLAN AGREEMENT

AMENDMENT A

FORD MOTOR COMPANY

The National Account Program Participating Plan Agreement, notwithstanding what is contained to the contrary in Article I, is hereby Amended by addition of the following:

The Participating Plan hereby agrees to underwrite and service the Prescription Drug Program effective October 1, 1969, as set forth in Addendum No. 1 to the Master Group Operating Agreement. A copy of Addendum No. 1 to the Master Group Operating Agreement and Addendum No. 1 to Exhibit "A" is attached hereto and by reference made a part of this Amendment.

This Amendment to the Participating Plan Agreement shall be effective at 12:01 a.m., October 1, 1969, and shall continue in force and effect in accordance with the terms and conditions of the Participating Plan Agreement.

_____	Michigan Hospital Service
(Plan)	
_____	_____
(Name)	(Name)
_____	_____
(Title)	(Title)
_____	Michigan Medical Service
(Plan)	
_____	_____
(Name)	(Name)
_____	_____
(Title)	(Title)

Memorandum—Auto Prescription Drug Program

NATIONAL ACCOUNT PROGRAM

PARTICIPATING PLAN AGREEMENT

AMENDMENT A

GENERAL MOTORS CORPORATION

The National Account Program Participating Plan Agreement, notwithstanding what is contained to the contrary in Article I, is hereby Amended by addition of the following:

The Participating Plan hereby agrees to underwrite and service the Prescription Drug Program effective October 1, 1969, as set forth in Addendum No. 1 to the Master Group Operating Agreement. A copy of Addendum No. 1 to the Master Group Operating Agreement and Addendum No. 1 to Exhibit "A" is attached hereto and by reference made a part of this Amendment.

This Amendment to the Participating Plan Agreement shall be effective at 12:01 a.m., October 1, 1969, and shall continue in force and effect in accordance with the terms and conditions of the Participating Plan Agreement.

_____	Michigan Hospital Service
(Plan)	
_____	_____
(Name)	(Name)
_____	_____
(Title)	(Title)
_____	Michigan Medical Service
(Plan)	
_____	_____
(Name)	(Name)
_____	_____
(Title)	(Title)

Memorandum—Auto Prescription Drug Program

NATIONAL ACCOUNT PROGRAM

MASTER GROUP OPERATING AGREEMENT

ADDENDUM NO. 1

CHRYSLER CORPORATION

This Addendum dated ————————, 1969, is between CHRYSLER CORPORATION (hereinafter referred to as the "Employer") and MICHIGAN HOSPITAL SERVICE, a Michigan nonprofit corporation existing and operating under the provisions of Act 109 P.A. Michigan 1939, as amended, (hereinafter referred to as "Hospital Service") and MICHIGAN MEDICAL SERVICE, a Michigan nonprofit corporation organized and existing under the provisions of Act 108 P.A. Michigan 1939, as amended (hereinafter referred to as "Medical Service").

Hospital Service and Medical Service agree to furnish or cause to be furnished for Enrollees (except persons covered as sponsored dependents, retirees and their dependents, and surviving spouses of employees, whether active or retired at date of death, and their dependents) the benefits under the Prescription Drug Group Benefit Program Certificate, form 87 (50-535).

The Blue Cross and Blue Shield Plan areas where prescription drug coverage is to be provided are set forth in Addendum No. 1 to Exhibit "A", which is attached and by reference made a part hereof.

Determination of the additional rates payable for the prescription drug coverage hereunder, and remittance of such rates, will be in accordance with the rating and remittance practices currently in effect between the Employer and the Participating Plans. Such rating and remittance practices may be modified from time to time.

Memorandum—Auto Prescription Drug Program

This Addendum to the Master Group Operating Agreement shall be effective at 12:01 a.m., October 1, 1969 and shall continue in force and effect thereafter until terminated in accordance with the terms and conditions of the Master Group Operating Agreement.

In WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed in duplicate, the date and year first above written.

Chrysler Corporation	Michigan Hospital Service
_____	_____
(Name)	(Name)
_____	_____
(Title)	(Title)

Michigan Medical Service

_____

(Name)

_____

(Title)

Memorandum—Auto Prescription Drug Program

NATIONAL ACCOUNT PROGRAM

MASTER GROUP OPERATING AGREEMENT

CHRYSLER CORPORATION

EXHIBIT "A"

ADDENDUM NO. 1

Blue Cross and Blue Shield Plan Areas Where Prescription Drug Coverage is to be Provided

Blue Cross Plan Areas	*Blue Shield Plan Areas*
Alabama	Alabama
Arizona	Arizona
California, Los Angeles	
California, Oakland	
	California, San Francisco
Colorado, Denver	Colorado, Denver
Delaware	Delaware
Illinois, Chicago (Includes Rockford Area)	Illinois, Rockford
Indiana	Indiana
Massachusetts	Massachusetts
Michigan	Michigan
Minnesota	Minnesota
Missouri, Kansas City	Missouri, Kansas City
New Jersey	New Jersey
New York, New York	New York, New York
Oregon	Oregon
	Pennsylvania, Camp Hill
Pennsylvania, Pittsburgh	
Pennsylvania, Wilkes-Barre	
Texas	Texas
Virginia, Richmond	Virginia, Richmond

Memorandum—Auto Prescription Drug Program

NATIONAL ACCOUNT PROGRAM

MASTER GROUP OPERATING AGREEMENT

ADDENDUM NO. 1

FORD MOTOR COMPANY

This Addendum dated ———————— 1969, is between FORD MOTOR COMPANY (hereinafter referred to as the "Employer") and MICHIGAN HOSPITAL SERVICE, a Michigan nonprofit corporation existing and operating under the provisions of Act 109 P.A. Michigan 1939, as amended, (hereinafter referred to as "Hospital Service") and MICHIGAN MEDICAL SERVICE, a Michigan nonprofit corporation organized and existing under the provisions of Act 108 P.A. Michigan 1939, as amended (hereinafter referred to as "Medical Service").

Hospital Service and Medical Service agree to furnish or cause to be furnished for Enrollees (except persons covered as sponsored dependents, retirees and their dependents, and surviving spouses of employees, whether active or retired at date of death, and their dependents) the benefits under the Hospital Service and Medical Service Prescription Drug Group Benefit Certificate, form 87 (50-535).

The Blue Cross and Blue Shield Plan areas where prescription drug coverage is to be provided are set forth in Addendum No. 1 to Exhibit "A", which is attached hereto and by reference made a part hereof.

Rating and additional rate remittance for the prescription drug coverage hereunder will be in accordance with the rate equalization arrangement which became effective on January 1, 1967 between the Employer, Hospital Service, and Medical Service, as the same may from time to time be modified.

Memorandum—Auto Prescription Drug Program

This Addendum to the Master Group Operating Agreement shall be effective at 12:01 a.m., October 1, 1969 and shall continue in force and effect thereafter until terminated in accordance with the terms and conditions of the Master Group Operating Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed in duplicate, the date and year first above written.

Ford Motor Company	Michigan Hospital Service
_____	_____
(Name)	(Name)
_____	_____
(Title)	(Title)

Michigan Medical Service

_____

(Name)

_____

(Title)

Memorandum—Auto Prescription Drug Program

NATIONAL ACCOUNT PROGRAM

MASTER GROUP OPERATING AGREEMENT

FORD MOTOR COMPANY

EXHIBIT "A"

ADDENDUM NO. 1

Blue Cross and Blue Shield Plan Areas Where Prescription Drug Coverage is to be Provided

Blue Cross Plan Areas	*Blue Shield Plan Areas*
Alabama	Alabama
Arizona	Arizona
California, Los Angeles	
California, Oakland	
	California, San Francisco
Colorado	Colorado
District of Columbia	District of Columbia
Florida	Florida
Indiana	Indiana
Iowa, Des Moines	Iowa, Des Moines
Kentucky	Kentucky
Louisiana, Baton Rouge	BC underwriters coverage
Maryland	Maryland
Massachusetts	Massachusetts
Michigan	Michigan
Minnesota	Minnesota
Missouri, Kansas City	Missouri, Kansas City
Nebraska	Nebraska
New Jersey	New Jersey
New York, Albany	New York, Albany
New York, Buffalo	New York, Buffalo
New York, New York	New York, New York
North Dakota	North Dakota
Ohio, Cleveland	Ohio, Cleveland
Pennsylvania, Philadelphia	
Pennsylvania, Pittsburgh	Pennsylvania, Camp Hill

Memorandum—Auto Prescription Drug Program

Blue Cross Plan Areas	*Blue Shield Plan Areas*
Texas	Texas
Utah	Utah
Virginia, Richmond	Virginia, Richmond
Washington, Seattle	Washington, Seattle
Wisconsin, Milwaukee	Wisconsin, Milwaukee

Memorandum—Auto Prescription Drug Program

NATIONAL ACCOUNT PROGRAM

MASTER GROUP OPERATING AGREEMENT

ADDENDUM NO. 1

GENERAL MOTORS CORPORATION

This Addendum dated ———————— 1969, is between GENERAL MOTORS CORPORATION (hereinafter referred to as the "Employer") and MICHIGAN HOSPITAL SERVICE, a Michigan nonprofit corporation existing and operating under the provisions of Act 109 P.A. Michigan 1939, as amended, (hereinafter referred to as "Hospital Service") and MICHIGAN MEDICAL SERVICE, a Michigan nonprofit corporation organized and existing under the provisions of Act 108 P.A. Michigan, 1939, as amended (hereinafter referred to as "Medical Service").

Hospital Service and Medical Service agree to furnish or cause to be furnished for Members (except persons covered as sponsored dependents, retirees and their dependents, and surviving spouses of employees, whether active or retired at date of death, and their dependents) the benefits under the Hospital Service and Medical Service Prescription Drug Group Benefit Program Certificate, form 87 (50-535).

The Blue Cross and Blue Shield Plan areas where prescription drug coverage is to be provided are set forth in Addendum No. 1 to Exhibit "A", which is attached hereto and by reference made a part hereof.

Determination of the additional rates payable for the prescription drug coverage hereunder, and remittance therefor, will be in accordance with the rating and remittance methods currently in effect between the Em-

ployer and each Participating Blue Cross and Blue Shield Plan and subject to review and approval by the Employer. Such rating and remittance methods may be reviewed and modified from time to time as agreed to by the Employer, and the appropriate Blue Cross or Blue Shield Plan.

This Addendum to the Master Group Operating Agreement shall be effective at 12:01 a.m., October 1, 1969 and shall continue in force and effect thereafter until terminated in accordance with the terms and conditions of the Master Group Operating Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed in duplicate, the date and year first above written.

General Motors Corporation	Michigan Hospital Service
_____	_____
(Name)	(Name)
_____	_____
(Title)	(Title)
	Michigan Medical Service
	_____
	(Name)
	_____
	(Title)

NATIONAL ACCOUNT PROGRAM

MASTER GROUP OPERATING AGREEMENT

GENERAL MOTORS CORPORATION

EXHIBIT "A"

ADDENDUM NO. 1

Blue Cross and Blue Shield Plan Areas Where Prescription Drug Coverage is to be Provided

Blue Cross Plan Areas	*Blue Shield Plan Areas*
Cailfornia, Los Angeles	
California, Oakland	
	California, San Francisco
Colorado	Colorado
D.C., Washington	D.C., Washington
Florida	Florida
Indiana	Indiana
Iowa, Des Moines	Iowa, Des Moines
Kansas	Kansas
Kentucky	Kentucky
Maryland	Maryland
Massachusetts	Massachusetts
Michigan	Michigan
	Minnesota, Minneapolis
Minnesota, St. Paul	
Missouri, Kansas City	Missouri, Kansas City
Montana, Great Falls	Montana, Helena
Nebraska	Nebraska
New Jersey	New Jersey
New York, Buffalo	New York, Buffalo
New York, New York	New York, New York
New York, Rochester	New York, Rochester
New York, Syracuse	New York, Syracuse
New York, Utica	New York, Utica
North Dakota, Fargo	North Dakota, Fargo
Ohio, Cleveland	Ohio, Cleveland

Memorandum—Auto Prescription Drug Program

Blue Cross Plan Areas	*Blue Shield Plan Areas*
Oregon, Portland	Oregon, Portland
	Pennsylvania, Camp Hill
Pennsylvania, Philadelphia	
Pennsylvania, Pittsburgh	
Pennsylvania, Wilkes-Barre	
Utah	Utah
Virginia, Richmond	Virginia, Richmond
	Wisconsin, Madison
Wisconsin, Milwaukee	Wisconsin, Milwaukee

Memorandum—Auto Prescription Drug Program

PARTICIPATING PROVIDER CAMPAIGNS

Section 2 of the BCA/NABSP Prescription Drug Program Manual discusses certain aspects of Provider Relations as they pertain to the drug program. This information should be helpful in designing local participating Provider campaigns.

Two very important factors to participating Providers are the establishment of the dispensing fee and the determination of acquisition costs. Information about these factors may be found in the material under Tab 3 of this booklet.

Principle administrative items affecting the Michigan participating Provider campaign include the following:

—Obtaining approval of certificate language

—Issuing press releases to local trade publications announcing the program

—Contacting pharmacies through letters and regional meetings explaining the program

—Obtaining signed Participating Pharmacy Agreements (see attached example of Michigan's agreement)

—Supplying administrative mechanisms (imprinters, claims forms etc.) to the participating Providers.

DRAFT
Michigan Participating
Provider Agreement

April 15, 1969

SERVICE BENEFIT
PRESCRIPTION DRUG PROGRAM
PARTICIPATION AGREEMENT

Date _____

This Agreement made between Michigan Blue Shield, acting on behalf of Michigan Blue Shield and Michigan Blue Cross, and

_____

(Name and Address of Pharmacy)

(a corporation) (partnership) (Proprietorship) doing business under Michigan Pharmacy License No. _____ _____:

1. The Participating Pharmacy agrees that all pharmacists providing services on its behalf are to be considered participating pharmacists.
2. The participating pharmacy agrees to provide services to subscribers in accordance with the terms of the subscriber's contract as described in the Michigan Blue Cross-Michigan Blue Shield Pharmacy Manual at the time of service.
3. Michigan Blue Cross-Michigan Blue Shield agree to pay to the Participating Pharmacy for all valid claims submitted by the Participating Pharmacy, and the Participating Pharmacy agrees to accept as full payment for services performed, according to the following reimbursement mechanism:

   Reimbursement, except for Insulin, will be the total of net acquisition cost as defined by Michigan Blue Cross-Michigan Blue Shield, plus the current professional fee payable by Michigan Blue Cross-Michigan Blue Shield for pharmaceutical services as stated in the Michigan Blue Cross-Michigan Blue Shield Pharmacy Manual at the time services are performed, less the co-payment amount payable by the subscriber. Claims for Insulin will be reimbursed on the basis of the lesser of the provider's usual and customary charges, or cost plus professional fee.

4. Michigan Blue Cross-Michigan Blue Shield agree to provide the Participating Pharmacy with a manual in which the contracted pharmaceutical benefits of the subscriber will be listed and the co-payment liability of the subscriber stated.
5. All contracts or transactions in which the Participating Pharmacy engages involving dispensing of drugs shall be between that Pharmacy and the patient, and Michigan Blue Cross-Michigan Blue Shield shall not be a party thereto.
6. Michigan Blue Cross-Michigan Blue Shield shall have the right to inspect all records pertaining to Michigan Blue Cross-Michigan Blue Shield Drug Program subscribers.
7. This agreement may be terminated at any time by either party by giving at least fifteen days written notice to the other party.
8. The Participating Pharmacy agrees not to engage in any advertising relative to the Michigan Blue Cross-Michigan Blue Shield Drug Program without prior approval of Michigan Blue Cross-Michigan Blue Shield.

Michigan Blue Shield	Participating Pharmacy
By _____	By _____
President	Official Title _____

IDENTIFICATION CARDS

Development of Identification Cards is a local Plan decision as far as size, style, and content are concerned. Some Plans may have already accommodated the Prescription Drug Coverage on their cards. Those who have not already done so should consider the use of one card which reflects the total program (hospital, medical, surgical, and prescription drugs). Separate cards for prescription drugs may be used but the customers have expressed a preference for one card.

Issuance should occur prior to the October 1, 1969 effective date, and distribution is to be handled in accordance with established local practice. The matter of National Identification Cards for Auto is being explored and adoption of such a card may be requested in the future.

CLAIMS PROCESSING GUIDELINES

Plans desiring guidance in developing a Claims Processing System are referred to in Sections 7, 8, and 9 of the BCA/NABSP Prescription Drug Program Manual, which detail various systems. The method to be adopted is dependent upon anticipated claims volume and related cost considerations.

The Michigan system of claims administration will rely on a high level of mechanical technology, including the use of plastic identification cards, imprinters, and optical scanning equipment for data conversion and utilization record maintenance.

Two separate reporting forms (see attachments "A" and "B") will be utilized in claiming payment under the Drug Program. Form "A" is for use by Michigan Participating

Providers when claiming payment direct. Form "B" will generate payment to the subscriber. (Please note the Claim Forms do not include any provision for C.O.B. It may be necessary to incorporate this phase of the program on the forms.)

Basic validation and editing functions will be performed by Michigan through the use of optical scanning equipment which will reject incomplete or invalid claims and automatically convert acceptable claims to magnetic tape. Processing of claims to conclusion, either payment or other disposition, will be performed in a manner similar to the basic benefits program for both eligibility and utilization record maintenance. Pricing of eligible Drug claims will be performed by computer, in accordance with the program benefits, limitations, member's liability and all other contributing factors.

Check writing for acceptable claims will occur weekly rather than bi-weekly as in the case of the basic Michigan benefit program. Other similarities to existing procedures will include record retention via microfilming and historical records, a status inquiry mechanism, and statistical data retrieval.

To the degree possible, the Michigan systems described have been finalized and administration will be carried out accordingly. It should be recognized, however, that the need for modifications may become apparent as the program implementation date is approached, and that subsequent changes may be necessary.

Attachment "A"
Draft

TYPE ALL ENTRIES — MAIL PART 2 (CLAIM FORM) TO:
MICHIGAN BLUE SHIELD
P.O. BOX 500
DETROIT, MICHIGAN 48231

IMPORTANT: DO NOT WRITE IN SHADED AREAS (MBS USE ONLY)

SUBSCRIBER NAME
EFFECTIVE DATE CURRENT COVERAGE
GROUP NO.
SERVICE CODE
PAYMENT TO PHARMACY
II. PROVIDER NAME AND ADDRESS
CONTRACT NUMBER
PLAN CODE
DATE OF SERVICE MO. DAY YEAR
PROVIDER NUMBER
REFERENCE NUMBER

III. REL. CODE	AGE	PRESCRIPTION NUMBER	NEW/ REFILL	DRUG CODE*	METRIC QUANTITY	ACQUISITION COST	+ DISPENSING FEE	= SUB TOTAL	- LESS CO PAY	= AMOUNT DUE	ACCT. NO.	TRANS CODE	TRANS CODE	FLAG	

FOR MBS USE ONLY

IV. *DRUG DESCRIPTION, DOSAGE FORM, STRENGTH, (REQUIRED ONLY IN ABSENCE OF DRUG CODE)

ELIGIBILITY VERIFIED

LETTER SENT

V. THIS SECTION TO BE COMPLETED BY PHARMACIST

ORIGINAL REFILL CODES: 0 FOR ORIGINAL PRESCRIPTION; 1 FOR FIRST REFILL; 2 FOR SECOND REFILL; 3 FOR THIRD REFILL, ETC.

PHARMACISTS CERTIFICATION STATEMENT:

"I CERTIFY THAT THE SERVICE DESCRIBED ON THIS CLAIM HAS BEEN PROVIDED IN ACCORDANCE WITH THE PARTICIPATING PHARMACY AGREEMENT AND CONDITIONS FOR PARTICIPATION IN THE MICHIGAN BLUE CROSS/BLUE SHIELD DRUG PROGRAM. THE CHARGES FOR THE SERVICES HEREIN CONSTITUTES THE FULL AND COMPLETE CHARGE FOR THE SERVICE PERFORMED."

X
PHARMACIST SIGNATURE

VI. THIS SECTION TO BE COMPLETED BY RECIPIENT.

PATIENT NAME

CIRCLE APPROPRIATE NUMBER TO INDICATE SUBSCRIBER OR PATIENT'S RELATIONSHIP TO THE SUBSCRIBER.

1 MALE SUBSCRIBER
2 FEMALE SUBSCRIBER
3 MALE SPOUSE
4 FEMALE SPOUSE
5 MALE DEPENDENT
6 FEMALE DEPENDENT

PRINT AGE OF PATIENT IN THIS BOX

CERTIFICATION STATEMENT

"I CERTIFY THAT THE PATIENT FOR WHOM THIS CLAIM IS MADE IS AN ELIGIBLE MEMBER IN THE MICHIGAN BLUE CROSS/BLUE SHIELD DRUG PROGRAM AND THAT SAID PATIENT IS ENTITLED TO BENEFITS UNDER THAT PROGRAM IN THE EVENT OF A CO ORDINATION OF BENEFITS PROVISION AND THAT THE PRESCRIPTION IS FOR THE SOLE USE OF THAT MEMBER. I UNDERSTAND THAT ANY FRAUDULENT USE OF THIS CARD CAN TERMINATE ALL BLUE CROSS/BLUE SHIELD COVERAGE."

X
RECIPIENT SIGNATURE

Attachment "B"
Draft

PRINT OR PLEASE TYPE ALL ENTRIES — MAIL PART 2 (CLAIM FORM) TO:
MICHIGAN BLUE SHIELD
P.O. BOX
DETROIT, MICHIGAN 48231

IMPORTANT: DO NOT WRITE IN SHADED AREAS (MBS USE ONLY)

I. SUBSCRIBER NAME
EFFECTIVE DATE CURRENT COVERAGE
GROUP NO.
SERVICE CODE
PAYMENT TO SUBSCRIBER
CONTRACT NUMBER
PLAN CODE
DATE OF SERVICE MO. DAY YEAR
II. PROVIDER NAME AND ADDRESS
PROVIDER NUMBER
REFERENCE NUMBER

III. REL. CODE	AGE	PRESCRIPTION NUMBER	NEW/ REFILL	DRUG CODE	METRIC QUANTITY	TOTAL CHARGE	ACCT. NO.	TRANS CODE	TRANS CODE	FLAG

FOR MBS USE ONLY

IV. DRUG DESCRIPTION, DOSAGE, AND STRENGTH

ELIGIBILITY VERIFIED

LETTER SENT

V. THIS SECTION TO BE COMPLETED BY PHARMACIST

ORIGINAL REFILL CODES: 0 FOR ORIGINAL PRESCRIPTION; 1 FOR FIRST REFILL; 2 FOR SECOND REFILL; 3 FOR THIRD REFILL, ETC.

PAYMENT FOR THE ABOVE PRESCRIPTION SERVICE WILL BE PAID TO THE SUBSCRIBER AND SENT TO THE ADDRESS GIVEN BELOW. CHECK WILL BE SENT TO THIS ADDRESS.

SUBSCRIBER'S LAST NAME — FIRST — INITIAL

STREET

CITY — STATE — ZIP CODE

VI.

PATIENT NAME

MARK APPROPRIATE NUMBER TO INDICATE RELATIONSHIP TO SUBSCRIBER AND PLACE IN "R" REL. CODE BOX ABOVE.

1 MALE SUBSCRIBER
2 FEMALE SUBSCRIBER
3 MALE SPOUSE
4 FEMALE SPOUSE
5 MALE DEPENDENT
6 FEMALE DEPENDENT

CERTIFICATION STATEMENT

"I CERTIFY THAT THE PATIENT FOR WHOM THIS CLAIM IS MADE IS AN ELIGIBLE MEMBER IN THE MICHIGAN BLUE CROSS/BLUE SHIELD DRUG PROGRAM AND THAT THE PRESCRIPTION IS FOR THE SOLE USE OF THAT MEMBER. I UNDERSTAND THAT ANY FRAUDULENT USE OF THIS CARD CAN TERMINATE ALL BLUE CROSS/BLUE SHIELD COVERAGE."

X
RECIPIENT SIGNATURE

ORIGINAL – RETAIN THIS COPY FOR YOUR RECORDS

DUPLICATE – CLAIM FORM – MAIL TO BLUE SHIELD

TRIPLICATE – STATUS INQUIRY

DESCRIPTIVE LITERATURE

Subscriber literature covering the Prescription Drug Program will be developed for all Plan areas by Michigan Blue Cross and Blue Shield. At the present time, it appears that such material will be in the form of separate pamphlets rather than a complete rewrite of the Employee Booklets. In accordance with the Implementation Timetable, the literature is scheduled for distribution by September 1, 1969. The method of distribution has not been decided; however, it will probably be handled similar to the booklet distribution in late 1968 and early 1969.

COORDINATION OF BENEFITS

The specifications for the prescription drug program contain a Coordination of Benefits provision. Detailed discussions on this subject have not yet been held with the Customer, however, it is assumed that the Coordination of Benefits principles already established for hospital, surgical, medical coverage will also apply to the Drug program. The large volume of low cost claims associated with drugs creates practical administrative difficulties. Currently, three (3) methods of administering this aspect of the program are under consideration. They are:

1. Investigate drug claims which exceed a fixed dollar limit. This method would be economical; however, using a dollar limit would not necessarily provide effective investigation of drug claims as a patient could have one large drug bill in a given year which would be less than an accumulation of smaller drug bills by another patient in the same year.
2. Piggy-back on other Coordination of Benefits investigations (e.g., investigations on in-patient, out-

patient and doctor's service cases). The cost of this method would be minimal and recovery potential relatively good since these would be cases which were already being investigated and where recovery was a definite possibility.

3. Investigate according to specific diagnoses. This method would be economical and would provide information regarding patients who use a large volume of costly drugs, by selecting diagnoses which normally require Prescription Drugs (e.g., diabetes, chronic heart conditions, etc.).

As soon as details have been concluded, they will be communicated to Plans. In the meantime, to assist in discussions with the customer any comments or suggestions Plans may have will be appreciated.

DATA REQUIREMENTS

The Control Plans will be required to furnish each Account with financial and statistical data covering the Prescription Drug Program, for Participating Plans.

To meet this requirement, the current Data and Claims Reporting Requirements will be revised. The changes are: 1) Revision of the Income Report; 2) Revision of the Expense Report; and 3) Inclusion of a new Monthly Drug Report. The Contract Exposure Report will be retained in its present form. National Paid Claim Cards will not be used for the Drug Program.

The reports should be submitted to:

(a) Contract Exposure, Income, and Expense Reports:

Michigan Blue Cross
441 East Jefferson Avenue
Detroit, Michigan 48226

Memorandum—Auto Prescription Drug Program

Attention: Mr. D. P. Mamuscia
Data & Rating Specialist
Auto Groups Department

(b) Monthly Drug Reports:
Michigan Blue Shield
441 East Jefferson Avenue
Detroit, Michigan 48226

Attention: Manager
Accounting Department

Copies of the report forms and instructions follow

CONTRACT EXPOSURE REPORT

Participating Plans are required to report contract exposure for the months of June and December each year.

For Ford and General Motors, separate reports are to be prepared for (1) Hourly and (2) Salaried contracts. For Chrysler Contracts, the distinction is between Bargaining and Non-bargaining units. Although there are some salaried bargaining employees, Plans should consider *all* bargaining Chrysler units as Hourly and *all* Chrysler non-bargaining units as Salaried when completing this report.

Participating Plans should use only those enrollment classifications applicable to local Plan definitions; i.e., if a Participating Plan does not employ the classification of "Mixed Coverage Contracts", this section will be left blank. However, Plans must accurately segregate their contracts and Sponsored Dependent Riders into the payroll locations listed. Any exceptions should be explained by a written attachment to the report.

Three copies of the Contract Exposure Reports are to be submitted to the Control Plans within 90 days following the reporting month.

Memorandum—Auto Prescription Drug Program

NATIONAL ACCOUNT PROGRAM
CONTRACT EXPOSURE REPORT

PARTICIPATING PLAN Plan Number	NAME OF ACCOUNT (BARG.) ☐ Hourly (NON-BARG.) ☐ Salaried	REPORTING PERIOD

ENROLLMENT CLASSIFICATION (Use Categories Applicable to Local Plan Definitions)	NUMBER OF CONTRACTS						
	ACTIVE EMPLOYEE	RETIRED EMPLOYEE	SURVIVING SPOUSE		RETIREE SURVIVING SPOUSE		TOTAL
			COMPANY PAID CONTRACTS	INDIVIDUAL PAID CONTRACTS	COMPANY PAID CONTRACTS	INDIVIDUAL PAID CONTRACTS	
REGULAR ONLY CONTRACTS (All members have regular coverage)							
INDIVIDUAL							
TWO PERSON							
FAMILY (two or more)							
FAMILY (three or more)							
TOTAL REGULAR ONLY							
COMPLEMENTARY ONLY CON. (All members have complementary coverage)							
INDIVIDUAL							
TWO PERSON							
TOTAL COMPLEMENTARY ONLY							
MIXED COVERAGE CONTRACTS							
TWO PERSON - One Regular Member, One Comp. Member							
FAMILY – With One Comp. Member							
FAMILY – With Two Comp. Members							
TOTAL MIXED CONTRACTS							
TOTAL CONTRACTS							
NUMBER OF MEMBERSHIP RIDERS							
SPONSORED DEPENDENTS							
REGULAR COVERAGE							
COMPLEMENTARY COVERAGE							
TOTAL							

Memorandum—Auto Prescription Drug Program

INCOME REPORT

This report need not be submitted for equalized accounts. The Income Reports are to be submitted to the Control Plan on a quarterly basis.

Report Items

1. All income should be reported by type of coverage (Hospital, Surgical-Medical, Prescription Drugs) and by payroll classification (Hourly vs. Salaried).
2. Earned Subscription Income—This will be a net figure based upon exposure for the quarter and any adjustments from previous periods.
3. Other Income Accruing to Account—This will be income exclusive of that based upon exposure for the quarter and any adjustments from previous periods.
4. Three copies of the Income Reports are to be submitted to the Control Plan within 60 days following the end of each quarter.

Memorandum—Auto Prescription Drug Program

NATIONAL ACCOUNT PROGRAM

EXPENSE REPORT

PARTICIPATING PLAN PLAN NO.	NAME OF ACCOUNT ☐ HOURLY (Barg.) ☐ SALARIED (Non-Barg.)	REPORTING PERIOD

Reserve for Claims Incurred but Unpaid

	Hospital Coverage	Surgical-Medical Coverage	Prescription Drug Coverage
Hourly			
Salaried			
Total			

Administrative Expenses

	Hospital Coverage	Surgical-Medical Coverage	Prescription Drug Coverage
Hourly			
Salaried			
Total			

Other Expenses

	Hospital Coverage	Surgical-Medical Coverage	Prescription Drug Coverage
Hourly			
Salaried			
Total			

Nature of Other Expenses

_____

_____

_____

_____

Memorandum—Auto Prescription Drug Program

EXPENSE REPORT

This report need not be submitted for equalized accounts. The Expense Reports are to be submitted on a calendar year basis.

Report Items

1. All items should be reported by type of coverage (Hospital, Surgical-Medical, Prescription Drugs) and by payroll classification (Hourly vs. Salaried).

2. Reserve for Claims Incurred but Unpaid—The figure representing the amount estimated by the Plan to cover this liability for the reporting period.

3. Administrative Expenses—Expenses that relate to the cost of performing the administrative functions involved. The amounts for claims paid and for those claims incurred but not yet paid, should be shown separately.

4. Other Expenses—This includes any expenses not related to the performance of administrative functions. An example would be the premium taxes that some Plans are required to pay. The nature of these other expenses should be explained in the space provided.

5. Those Blue Cross Plans who pay member hospitals on the basis of reimbursable costs and are involved with supplemental payments may use either of the following methods to report their total benefit payments:

   (1) On each claim, use (in columns 51-56) the percent of charges that you estimate to accurately reflect the final ratio of liability to charges.

Memorandum—Auto Prescription Drug Program

   (2) Submit, with the Expense report and reported by type of coverage and payroll classification, the supplemental amounts to be added to the initial benefit payments.

   Whichever method is used, any differences between the estimates submitted and actual amounts paid should be reported to the Control Plan so that the necessary adjustments can be made.

6. Three copies of the Expense Reports are to be submitted to the Control Plan within 90 days after the reporting period.

Memorandum—Auto Prescription Drug Program

NATIONAL ACCOUNT PROGRAM

INCOME REPORT

PARTICIPATING PLAN PLAN NO.	NAME OF ACCOUNT ☐ HOURLY (Barg.) ☐ SALARIED (Non-Barg.)	REPORTING PERIOD

Earned Subscription Income

	Hospital Coverage	Surgical-Medical Coverage	Prescription Drug Coverage
Hourly			
Salaried			
Total			

Other Income Accruing to Account

	Hospital Coverage	Surgical-Medical Coverage	Prescription Drug Coverage
Hourly			
Salaried			
Total			

Nature and Source of Other Income

Memorandum—Auto Prescription Drug Program

PLAN INVOICE FOR NATIONAL ACCOUNTS MONTHLY DRUG REPORT

(Completion Key)

A. CONTROL PLAN GROUP NUMBER—ENTER APPROPRIATE GROUP NUMBER PER LISTING ON PAGES 7.75-7.77 OF OPERATIONS MANUAL HSMD AUTO NATIONAL ACCOUNT PROGRAM

B. GROUP NAME—ENTER

"CHRYSLER CORPORATION"
"FORD MOTOR COMPANY"
"GENERAL MOTORS CORPORATION"

C. PLAN NUMBER—ENTER YOUR PLAN NUMBER

D. REPORT MONTH AND YEAR—ENTER THE MONTH AND YEAR FOR WHICH DATA IS BEING TRANSMITTED

E. "NO CLAIMS PAID" CHECK BOX—CHECK IF NO CLAIMS PAID DURING THE REPORT MONTH

F. NUMBER OF SERVICES (PRESCRIPTIONS) PAID—FOR SINGLE, TWO PERSON, FAMILY AND TOTAL, REPORT THE ACTUAL NUMBER OF PRESCRIPTIONS PAID

G. TOTAL AMOUNT PAID—FOR SINGLE, TWO PERSON, FAMILY AND TOTAL, REPORT THE ACTUAL AMOUNT PAID

Memorandum—Auto Prescription Drug Program

H. NUMBER OF CLAIMS PAID—FOR SINGLE, TWO PERSON, FAMILY AND TOTAL, REPORT THE ACTUAL NUMBER OF CLAIMS FORMS PROCESSED

I. PLAN NAME—ENTER YOUR PLAN'S NAME

J. CITY AND STATE—ENTER THE CITY AND STATE IN WHICH YOUR PLAN IS LOCATED

K. PREPARED BY (NAME AND TITLE)

L. DATE—ENTER DATE OF TRANSMISSION

Memorandum—Auto Prescription Drug Program

PLAN INVOICE FOR NATIONAL ACCOUNTS

MONTHLY DRUG REPORT

Control Plan Group Number A	Group Name B	Plan No. C	Report No + Yr D	☐ Check if No Claims Are Paid in the Report Month E

F Number of Services Paid	1	2	3	Total
G Total Amount Paid	$	$	$	$
H Number of Claims Paid				

Plan Name I	City and State J
Prepared by (Name and Title) K	Date L

INVOICE PREPARATION INSTRUCTIONS

1. Mail by the fifteenth of the month following the report month.
2. Submit one invoice for each group number per Operations Manual HSMD Auto National Account Program (Pages 7.75 - 7.77).
3. Mail to:

Michigan Blue Shield
441 East Jefferson Avenue
Detroit, Michigan 48226

Attention: Manager,
Accounting Department

1 = one person contract
2 = two person contract
3 = family contract

Memorandum—Auto Prescription Drug Program

RATING GUIDELINES

Plans will shortly be requested to complete Drug program rating questionnaires in respect to the program to become effiective October 1, 1969, for Chrysler, Ford, and General Motors.

The Chrysler and General Motors' questionnaires will request local plan rate calculations and rating assumptions.

The Ford questionnaire will outline the equalization proposal and request local plan participation.

For Chrysler and General Motors coverage, it is anticipated that the request will include questions on the following basic assumptions and calculations:

1. Cost per prescription.
2. Prescriptions per year.
3. Adjustment (if any) for non-participating pharmacies.
4. Adjustment (if any) for non-legend drugs.
5. Retention schedule.
6. Enrollment mix for a recent month.
7. Rating formula.

With respect to Chrysler and General Motors, the Michigan Plans intend to provide Drug program coverage based on "community" or manual rates for the initial rating period. Renewal rates will then be calculated on the basis of experience.

It is anticipated that the rating questionnaires will be sent to local plans on approximately May 10, 1969.

Memorandum—Auto Prescription Drug Program

FORD EQUALIZATION PROCEDURES

The Monthly Drug Report will also be used for reimbursement under the Ford Equalization Program. National Paid Claim Cards will not be utilized.

Details of the reimbursement formula are being finalized and will be distributed in the near future, along with a request for Plan Participation in the Equalization Program.

GENERAL MOTORS SALARIED EMPLOYEES

Although the General Motors salaried employees are not included in the National Account Program, Michigan Blue Cross and Blue Shield have been asked to coordinate implementation of a Prescription Drug Program for salaried personnel. The coverage is to be effective concurrent with the hourly-rate program October 1, 1969, and is subject to the same eligibility requirements (Sponsored Dependents, Retirees and their dependents, and Surviving Spouses and their dependents are excluded).

Plans should submit to the Control Plans (Auto Groups Department, Michigan Blue Cross) a statement signed by a local Plan official which identifies the Drug Program being proposed for salaried employees. It is expected that Plans will propose the same program being offered under the National Account Program.

Rating instructions regarding proposals for salaried employees will be distributed to Plans. Preliminary instructions have already been issued under Salaried Release 2, dated April 17, 1969.

Memorandum—Auto Prescription Drug Program

PLANS IN ATTENDANCE
WASHINGTON, D.C.
APRIL 22, 1969

BLUE CROSS	BLUE SHIELD
Connecticut, New Haven	Connecticut, New Haven
Delaware, Wilmington	Delaware, Wilmington
District of Columbia	District of Columbia
Kentucky, Louisville	Kentucky, Louisville
Maine, Portland	Maine, Portland
Maryland, Baltimore	Maryland, Baltimore
Massachusetts, Boston	Massachusetts, Boston
New Jersey, Newark	New Jersey, Newark
New York, Albany	New York, Albany
New York, Buffalo	New York, Buffalo
New York, New York	New York, New York
New York, Rochester	New York, Rochester
New York, Syracuse	New York, Syracuse
Pennsylvania, Allentown	Pennsylvania, Camp Hill
Pennsylvania, Harrisburg	
Pennsylvania, Philadelphia	
Pennsylvania, Pittsburgh	
Pennsylvania, Wilkes-Barre	
West Virginia, Wheeling	West Virginia, Wheeling

Blue Cross Association
National Association of Blue Shield Plans

PLANS IN ATTENDANCE
ATLANTA, GEORGIA MEETING
APRIL 24, 1969

BLUE CROSS	BLUE SHIELD
Alabama, Birmingham	Alabama, Birmingham
Florida, Jacksonville	Florida, Jacksonville
Georgia, Atlanta	
Georgia, Columbus	Georgia, Columbus
Louisiana, New Orleans	Louisiana, Baton Rouge
Missouri, Kansas City	
North Carolina, Durham	

Blue Cross Association
National Association of Blue Shield Plans

Memorandum—Auto Prescription Drug Program

PLANS IN ATTENDANCE
SAN FRANCISCO MEETING
APRIL 29, 1969

BLUE CROSS	BLUE SHIELD
Arizona, Phoenix	Arizona, Phoenix
California, Los Angeles	California, San Francisco
California, Oakland	
Colorado, Denver	Colorado, Denver
Missouri, St. Louis	
Montana, Great Falls	Montana, Helena
Oklahoma, Tulsa	
Oregon, Portland	Oregon, Portland
Texas, Dallas	Texas, Dallas
Utah, Salt Lake City	
Washington, Seattle	Washington, Seattle
Wyoming, Cheyenne	Wyoming, Cheyenne

Blue Cross Association
National Association of Blue Shield Plans

PLANS IN ATTENDANCE
CHICAGO, ILLINOIS MEETING
MAY 1, 1969

BLUE CROSS	BLUE SHIELD
Illinois, Chicago	Illinois, Rockford
Indiana, Indianapolis	Indiana, Indianapolis
Iowa, Des Moines	Iowa, Des Moines
Kentucky, Louisville	Kentucky, Louisville
Michigan, Detroit	Michigan, Detroit
Minnesota, St. Paul	Minnesota, Minneapolis
Nebraska, Omaha	Nebraska, Omaha
North Dakota, Fargo	North Dakota, Fargo
Ohio, Cincinnati	
Ohio, Cleveland	Ohio, Cleveland
Ohio, Columbus	Ohio, Columbus
Ohio, Toledo	
Virginia, Richmond	Wisconsin, Milwaukee
Wisconsin, Milwaukee	Wisconsin, Madison

Blue Cross Association
National Association of Blue Shield Plans

LETTER FROM M. C. ROTTER TO TOM L. BEAUCHAMP, JR. DATED MAY 28, 1968 ("EXHIBIT 32" TO DEPOSITION OF JUDITH M. JOHNSON, NOVEMBER 20, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

[LOGO]

NATIONAL ASSOCIATION OF BLUE SHIELD PLANS
211 East Chicago Ave., Chicago, Ill. 60611
Phone (312) 943-8181

May 28, 1968

Mr. Tom L. Beauchamp, Jr., President
Group Life & Health Insurance Co.
Main at North Central Expressway
Dallas, Texas 75222

Re: Drug Program—Indemnity Areas

Dear Tom:

For areas like yours who are faced with the auto "service" drug program, I have a germ of an idea (which you may have already discarded) hinged mainly on providing a greater indemnity to pharmacies (acquisition cost plus dispensing fee) because of agreement to use a "bulk or simplified" accounting base; i.e., more benefit because of lesser administrative cost. The mass accounting agreement would then serve like a participating agreement.

1. On the subscriber contract the indemnity would be 75% of usual and customary, subject to the provision that Blue Shield, under a facility of payment clause, shall extend indemnity, to the extent that a subscriber need pay no more than the deductible for such item, for drugs billed for by and payable to all pharmacies agreeing to Blue Shield's mass claims accounting agreement, as may be established by Blue Shield.

The basic claims payment clause would be to pay the subscriber or, by using a facility of payment clause, the pharmacy. The company's option to use the facility of payment clause would uniformly be for those pharmacies having a mass accounting agreement. I think it would be best to draft the contract so that the Insurance Board would require filing of the mass accounting agreement to strengthen your base on antitrust. Drafting problems will get sticky here, but let's pass on that for now.

2. The mass accounting agreement probably should have self-serving whereas clauses emphasizing Blue Shield's intent to offer coverage, desire to relate payments to providers for these services, and the need to simplify administration and accounting in the public interest. The basic agreement would be that the accounting basis of indemnification under the facility of payment clause of the subscriber contract, for Blue Shield subscribers for services rendered by the pharmacy, would be acquisition cost plus dispensing fee in the aggregate for all services within a reporting period and that the pharmacy would make no charge to the subscriber in excess of the deductible. The pharmacy's quid pro quo is "averaging", bulk submissions and payment to him.

Tom, there are a lot of holes in this, but the alternative is paying usual and customary—and praying.

Sincerely,

/s/ M. C. Rotter
M. C. ROTTER

EXCERPTS FROM DEPOSITION OF LEE HELIS, NOVEMBER 21, 1975

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

---

* * * *

[4] DIRECT EXAMINATION

BY MR. PULLEN:

Q Would you state your name, please?
A Lee Helis.
Q How old are you, Mr. Helis?
A Thirty years old.
MR. KAISER: Let's go off the record.

(A discussion was had off the record.)

Q (By Mr. Pullen) What is your home address?
A 3326 Blueridge Lane, Garland, Texas.
Q Who is your present employer?
A Blue Cross-Blue Shield of Texas.
Q Any particular company?
A Group Hospital Service, Incorporated.
Q How long have you been employed by them?
A Eight years.
Q Prior to that time were you employed by any other organization on a full-time basis?
A Yes, I was.
Q What was that?
[5] A Texas Instruments.
Q Do you have any academic training?
A What do you mean by academic training?
Q College.
A Yes, sir, I do.
Q Where was that?

Excerpts From Deposition of Lee Helis

A Southern Methodist University and North Texas State University.
Q Did you get a degree?
A No, I did not.
Q How many years were you in school?
A Approximately three years.
Q Since you've been employed by your present employer what type of work have you done?
A I have primarily been in claims administrative type work.
Q Any particular type of coverage?
A All types of coverage.
Q All right. What is your present title?
A Manager of regular claims.
Q What does that include?
A That includes two areas of responsibility in our claims division one being our Blue Cross Claims Payment Unit and the other being Blue Shield's Claim Payment Unit.
[6] Q What is encompassed in the Blue Cross claims?
A Primarily hospital claims.
Q All right. That would be for hospital services and drugs furnished to people while they're in the hospital, this type—
A Yes, sir.
Q Does it include the doctor's portion?
A Not in the hospital claim section, no, sir.
Q All right. Now, in the Blue Shield claim area what do you do there; what type of things?
A This deals primarily with the physician file claims.
Q Do you have anything to do with the claims under the prepaid prescription coverage?
A Not any longer, no, sir.
Q When did that stop?
A October the 1st of this year.

Excerpts From Deposition of Lee Helis

Q How long were you involved in the Blue Shield prepaid prescription claims?

A Since May the 1st, 1972.

Q What exactly did you do in connection with the prepaid prescription claims?

A Okay. Now, can you give me a little better definition of exactly what you want in relation to that?

Q Well, I just want to know generally everything [7] you do in your job or what you have done.

A Okay. Does this include from the time the claim comes into the office until the time a check is written up; this type of detail?

MR. KAISER: I think it's just talking about your particular function.

THE WITNESS: My past function, in other words?

Q (By Mr. Pullen) Yes.

A Okay. At the time I was serving as manager of Special Claims Department of course this is where the prescription drug claims are handled presently—more of a consulting type position than anything else. We have front line supervision type people that deal directly with the prescription drug claims.

Q How many people do you have in that division now that deal with prescription drug claims?

A Approximately six people.

Q Six?

A Yes.

* * * *

[9] Q Do you have any idea how many claims your outfit handled under the prepaid prescription drug program a month?

A Approximately 31,000 claims per month.

Q Would this be true from '72 through the end of October—

A No, sir, it would not.

Excerpts From Deposition of Lee Helis

Q All right. Can you give me an idea what it was per month in 1972?

A Yes, sir, in the beginning it was approximately 1,000 claims per month.

MR. KAISER: You say in the beginning you meant in 1972?

THE WITNESS: Yes, sir, that's correct.

[10] Q (By Mr. Pullen) All right. Did that hold true pretty much through '72?

A No, sir, it did not.

Q All right. When did that change?

A Approximately 60 to 90 days into the program is when our volume started picking up considerably.

Q Okay. At the end of '72 what were you servicing per month?

A Approximately six to eight thousand claims per month.

Q This is just on the prepaid prescription drug program?

A That's correct.

Q All right. Now, how about in '73?

A Okay. Again we enrolled additional business and the claims volume increased to approximately twelve thousand to fifteen thousand claims a month.

Q All right. How about 1974?

A Okay. We again experienced an increase in the volume to approximately twenty to twenty-five thousand claims per month.

Q And through October of 1975?

A Approximately 31,000 claims per month.

* * * *

[13] Q (By Mr. Pullen) All right. So then the record, for example if Joel Pullen was a pharmacist and he participated in this program as a participating pharmacy

in your area there are no records other than just a list of the pharmacists, is that correct, who do participate?

A That is correct, yes, sir.

Q Now, how many claims do you receive each month on the average from non-participating pharmacists? Do you know the difference?

A Yes, I do.

Q Okay.

A Approximately 600 claims per month.

Q That's as of October?

A Yes, sir.

* * * *

[15] Q (By Mr. Pullen) I'm going to give you what has been marked as Deposition Exhibit 2 to Judy Johnson's deposition and on the next to the last page there is a small preprinted form and ask you to identify that.

A Okay. This is the form currently used by either the participating pharmacy or the subscriber to file a prescription drug claim.

Q All right. And the susbcriber would file where he's purchased his prescription at a non-participating pharmacy normally, is that correct?

A That's correct.

Q Do you have any information whatsoever as to the amount of claims paid monthly; the dollar volume?

A No, sir, I do not.

* * * *

[19] CROSS EXAMINATION

BY MR. KAISER:

Q Mr. Helis, when you were referring to this claim form which is attached to Deposition Exhibit Number 2 which was the portion of the deposition of Miss Judy Johnson you mentioned that that claim form was used

by participating pharmacies and by subscribers when they submit their individual claims?

A That's correct.

Q Tell me how subscribers normally send their claims in when they have gone to a non-participating pharmacist?

A Okay. Generally the subscriber when filing a claim form will not actualy fill out this claim form and submit it to us. We will generally receive a receipt similar to the one that I would get if I walked in off the street to a pharmacist and bought a prescription and paid it.

Q Well, when you receive that receipt what do you do with it?

A All right. Most of the time the receipts do [20] not have enough information on them to actually process a claim. At this point in time we generally have to go back to the subscriber and ask him specific questions to get the necessary information. When this is received back we have to manually and physically fill out the claim form for that subscriber and then perform our audit process and the process we talked about earlier.

Q Now, you have some data processing functions both with a claim from a participating pharmacist and with a claim from—that comes in from a subscriber who has purchased medication—

A That's correct.

Q —from a non-participating pharmacist?

A That's correct.

Q Which one has the greatest number of data processing functions?

A The claim filed by the subscriber from a non-participating pharmacy has the greater amount of work necessary to be done to complete the claim form. We have additional functions we have to perform since we have to manually set up the claim form ourselves in house. We have to check a couple of more areas of the claim form.

Excerpts From Deposition of Lee Helis

It causes our direct data entry people to also have a couple of extra strokes they have to perform.

[21] Q When you use the term direct data do you mean with the computers?

A Yes, sir, I do.

MR. KAISER: Let's go off the record for a minute.

(A discussion was had off the record.)

Q (By Mr. Kaiser) You said that when a claim comes in from an individual subscriber—as I understood your testimony you said you normally received just a prescription receipt?

A That's correct.

Q And that as I further understood your testimony most of the time those prescription receipts did not contain the necessary or the required information for processing claims, is that correct?

A That's correct.

Q And then I believe you testified that you would have to go back to the subscriber and obtain that necessary information, is that correct?

A That's correct.

Q How would you get back in touch with the subscriber?

A All right. We have specific form letters that we have set up to accomplish this purpose.

[22] Q Through the mails then?

A That is correct.

Q Can you say, Mr. Helis, that generally there is more work involved in processing a claim from a subscriber than from a participating pharmacist?

A Yes, sir.

MR. KAISER: I have no further questions.

MR. WALRAVEN: No questions.

Excerpts From Deposition of Lee Helis

REDIRECT EXAMINATION

BY MR. PULLEN:

Q I have a few more. These form letters, when you send those to the subscriber he doesn't get his check with those, does he?

A No, sir, he does not.

Q It takes him longer and it's more involved for a subscriber to get a claim paid when he deals with a non-participating pharmacist than if he deals with a participating pharmacist, is it not?

A That could be the case, yes, sir.

Q Well, generally isn't it the case?

A Yes, sir.

Q And on the average where you have a subscriber who deals with a non-participating pharmacist then he just sends you a copy of his prescription bill how long does it take before he gets his money—his reimburse-

[23] ment?

A Do you mean from the time we receive the information back in the shop?

Q Yes.

A Approximately ten days.

Q And usually in that ten-day period he'll get some correspondence from you?

A He'll receive his check specifically, yes.

Q Yes. But I mean if he just sends you this receipt which doesn't have all the information he'll get correspondence from you and then he'll have to answer that and give you the additional information you require to pay his claim?

A Yes, sir. Now, that process does not take ten days.

Q Yes.

A Correct.

Excerpts From Deposition of Lee Helis

Q It's a lot simpler for a subscriber if he goes to a participating pharmacist, isn't it?

A Yes, sir.

Q And his reimbursement differs to whether he goes to a participating pharmacist—

MR. KAISER: I'll object to the form. It's a statement rather than a question.

Q (By Mr. Pullen) All right. Does his [24] reimbursement differ?

A Yes, sir, it does.

Q All right. For example let's just say that we have a prescription that costs $6.00 and as I understand your participating drug plan $2.00 of that the subscriber pays?

A That's correct.

Q And if we assume an acquisition cost of $4.00 if he deals with a participating pharmacist who has signed a participating pharmacy agreement the pharmacist will get reimbursed the full $4.00?

A That's correct.

Q So all it cost the subscriber is $2.00?

A That's correct.

Q Now, if he deals with a non-participating pharmacist he still pays—he, being the subscriber pay the $2.00?

MR. KAISER: I think you're assuming that the non-participating pharmacist is going to charge only $6.00.

MR. PULLEN: I'm assuming the same charge just for the purpose of illustration.

MR. KAISER: Are you assuming that the non-participating pharmacist is going to charge the acquisition cost just as a participating pharmacist [25] would?

MR. PULLEN: I'm assuming the same charge. Then of the $4.00 how much will the subscriber get?

THE WITNESS: Seventy-five percent.

Excerpts From Deposition of Lee Helis

Q (By Mr. Pullen) So he'll get $3.00 there so he's out an extra dollar by dealing with a non-participating pharmacist under my example?

MR. KAISER: I'll object to the form of the question. It's a statement.

Q (By Mr. Pullen) Would he or wouldn't he be out an extra dollar if he deals with a non-participating pharmacist under my example?

A Yes, sir, he would be out.

• • • •

EXCERPTS FROM DEPOSITION OF STEVE G. McDONALD, NOVEMBER 21, 1975

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

* * * *

DIRECT EXAMINATION

[4] BY MR. PULLEN:

Q Would you state your name, please?
A Steve G. McDonald.
Q Where do you live, Mr. McDonald?
A Dallas.
Q Texas?
A Texas.
Q How old are you, sir?
A Thirty-four—thirty-five, excuse me. Thirty-five.
Q By whom are you presently employed?
A Group Hospital Service, Incorporated.

MR. KAISER: Counsel, at this point I might say Mr. McDonald is one of the staff counsel for Group Hospital Services, Group Life And Health Insurance Company and there may be an occasion—because of his position as staff counsel there may be an occasion in this deposition where I will have to envoke the attorney-client privilege in behalf of the client; just so we can understand why I [5] wanted to mention that at the outset.

Q (By Mr. Pullen) All right. Now, if your employer at this time is Group—
A Hospital Service, Incorporated.
Q What does that company do?
A That corporation is also known as Blue Cross of Texas. It's a non-profit hospital service corporation organized under Chapter 20 of the Texas Insurance Code.
Q All right. Have you always worked for that corporation?

Excerpts from Deposition of Steve G. McDonald

A I have been here for several years. I have had previous employers.
Q All right. Well, how long have you worked for Group Hospital Service, Inc.?
A I've been employed since December of 1960 with the exception of a nine-month period in 1963.
Q Where would that nine months have been?
A It would have been when I was attending school full time. The rest of the time it was at night.
Q When did you receive your law degree?
A January of 1966.
Q And you're admitted to the Texas State Bar?
A Yes.
Q Prior to the time you got your law degree what type of work were you doing at Group Hospital Service, [6] Inc.?
A Well, from December of 1960 until either December of '62 or January of '63 I was employed in the subscriber accounts department which was the department that handled our group premium billings employed in a clerical capacity. I terminated at that time and had begun law school the prior September at night. I converted to a day student and attended for nine months and in September of 1963 I was re-employed as a management trainee and was employed in that capacity until I graduated from law school and was assigned to the legal division as an associate counsel.
Q All right. You've been in the legal division how many years roughly?
A Well, it would be—
Q Nine?
A —nine years.
Q All right. What type of legal work have you done in the legal division?
A Well, it has been, you know, a wide variety of general corporate legal activities. I suppose the ma-

jority of my time has been involved in drafting and development of contract forms; the insurance documents that we issue.

Q By contract forms or insurance documents [7] would that include the insurance policy forms?

A Yes.

Q All right. Does it also include the Participating Drug Pharmacy Agreement which is Exhibit 1 to Miss Judy Johnson's deposition?

A I was involved in the drafting of that, yes.

Q All right. Now, are you also involved with the filings or approvals of various insurance documents with the commissioner of insurance of the State of Texas?

A Yes, I am.

Q All right. Mr. McDonald, I wish you would explain for me the corporate structure of the Blue Cross-Blue Shield Companies; for example I believe you worked for Group Hospital Service, Inc.—the Defendant here is Group Life And Health Insurance Company. Could you tell me about them and any other companies that come under the Blue Cross-Blue Shield Group?

A There are three corporations in our operation. We have Group Hospital Service, Incorporated which I described previously; Group Life And Health Insurance Company which is a legal reserve stock life insurance company organized under Chapter 3 of the Texas Insurance Code which is owned by Group Hospital Service, [8] Incorporated and we have Group Medical And Surgical Service which is a state-wide mutual assessment company organized under Chapter 14 of the Insurance Code. Blue Cross as I mentioned previously is authorized as a Blue Cross Plan by the Blue Cross Association and operates as Blue Cross of Texas. Group Life And Health Insurance Company and Group Medical And Surgical Service are Blue Shield Plans as authorized by the National Association of Blue Shield Plans and are known as Blue Shield of Texas.

Q All right. Now, you mentioned that Group Hospital Service, Inc. is a non-profit corporation?

A Yes.

Q All right. How did that come to be formed as a non-profit corporation?

A Well, it was formed in 1939—I'm not so sure of that date. Obviously I wasn't involved at that time.

Q Well, my question is was it formed by a group of individuals or by another insurance company or some other—

A By a group of individuals.

Q All right. Now, was this the first of the companies you mentioned here that was formed?

A Yes.

[9] Q All right. So they first formed Group Hospital Service, Inc. which is also known as Blue Cross of Texas and that is a non-profit corporation, is that correct?

A It is a non-profit hospital service corporation.

Q All right. Now, what is a hospital service corporation?

A It is the type of company organized under Chapter 20 of the Texas Insurance Code.

Q What does it do?

A It provides hospital benefits through contracts between that corporation and hospitals as well as it provides benefits for medical and surgical care on an indemnity basis.

Q Now, Group Life and Health Insurance Company, that is a profit corporation formed under the Texas Businesse Corporation Act?

(A discussion was had off the record.)

Q (By M. Pullen) Well, let's go on and I'll ask you that again when they come back.

Now, the other companies that you mentioned—well, let me ask you this; Group Life and Health Insurance

Company, is the stock in that owned by [10] various individuals or is that owned by some corporation?

A All of the stock is owned by Group Hospital Service Incorporated except for a few qualifying shares issued to members of the Board of Directors.

Q All right, sir. Do you know the reason that Group Life And Health Insurance Company was formed or what it was intended to be used for; maybe that will be a little easier?

A Again that corporation was formed prior to my association with Group Hospital Service.

Q Well, what area—

A I have an understanding of why it was but I do not know.

Q All right. Would you tell us what your understanding is?

A Well, it's my understanding that it was formed in order to permit issuance of group master contracts for coverage of physician services.

Q All right. Now, was there any other type coverage that has been added since its formation?

A Yes, we issue life insurance, disability income insurance, the drug coverage, dental coverage; a wide range of—

Q All right.

[11] A —benefits.

Q Now, the other corporations that you mentioned; we've covered Group Hospital Service, Inc. and Group Life And Health Insurance Company, what do the other corporations do?

A Well, the only other corporation is Group Medical And Surgical Service and it has issued in the past physician service benefits. Since the formation of Group Life And Health Insurance Company very little new coverage has been issued by Group Medical And Surgical Service.

Q All right.

MR. KAISER: May we go off the record for just a minute?

(A discussion was had off the record.)

Q (By Mr. Pullen) Now, does Group Hospital Service, Inc. furnish in effect the legal staff for the other subsidiary corporations?

A Yes, there is a management contract between Group Life And Health Insurance Company and Group Hospital Service.

Q Does Group Life And Health Insurance Company have any employees of its own?

A I could not actually answer that question.

[12] Q All right. May we leave a blank and would you find out and if so tell me?

A Okay. [Answer inserted later:] No.

Q How many approximately it has at this time and what general areas they work in.

Are any of the shares of stock in any of the companies that you've mentioned other than the directors qualifying shares owned by any individual stockholders?

A No.

Q So then what we have is a corporate structure that consists of Group Hospital Service, a non-profit corporation at the top and then it owns the stock of three—

A No.

Q All right. Well,—

A Group Life And Health, as I stated, is a stock company.

Q Yes.

A And Group Hospital Service does own the stock of Group Life And Health Insurance Company.

Q All right.

Excerpts from Deposition of Steve G. McDonald

A Group Medical And Surgical Service is a state-wide mutual assessment company. It is not a [13] stock company.

Q What is a state-wide mutual assessment company?

A It's a mutual company owned by the policy holders.

Q All right. And is that operated under a management contract as well by Group Hospital Service, Inc.?

A Yes, it is.

Q Now, the other company you mentioned which I think—is there a fourth company?

A No, there's just three.

Q All right. Well then, we've covered it?

A Yes.

MR. KAISER: We should have done this yesterday.

MR. PULLEN: Well, I was trying.

Q (By Mr. Pullen) Now, you mentioned the Blue Cross Association. Would you explain the relation between the Texas—what I call Blue Cross-Blue Shield Companies and the other Blue Cross-Blue Shield Companies in the United States?

A All right. Presently the Blue Cross name and service mark are owned by the Blue Cross Association.

Q Now, where is that located?

[14] A Chicago, Illinois.

Q All right.

A Group Hospital Service, Incorporated is a member of the Blue Cross Association and is authorized by the Blue Cross Association to use a Blue Cross service mark in the State of Texas.

Q All right.

A The other Blue Cross Plans across the nation are simply members of the Blue Cross Association and authorized to use the service mark.

Excerpts from Deposition of Steve G. McDonald

Q How is this membership authorized; is it through some sort of licensing agreement or a contract of some type?

A I would have to review the files on that to answer that question.

Q All right. Do the Texas companies pay a fee to the national organization of some type for the use of the name?

A There are dues.

Q Dues?

A Yes.

Q Do you have any idea what they are annually?

A No.

Q Who would know that?

A I suppose Mr. Pascasio, our Vice President [15] of Finance.

Q All right. What exactly besides the use of the name does the national association furnish to its due paying members?

A They provide assistance in handling of national accounts and they have a wire system which permits the processing of claims of a plan member who is confined or receives hospital care in another state served by another Blue Cross plan.

Q They have a legal staff?

A Yes.

Q Do they give any guidelines or rules or regulations to the companies such as the Texas companies who use their name?

A They publish advisory memorandum from time to time, yes.

Q Are you the attorney who has primary responsibility for filing of material with the Commissioner of Insurance of the State of Texas here at Blue Shield?

A I have the primary responsibility for filing policy forms with the commissioner.

• • • •

Excerpts from Deposition of Steve G. McDonald

[21] Q With relation to the prepaid prescription drug coverage does Group Life And Health Insurance Company engage in that business in any other state other than Texas?

A We only issue the coverage to corporations in Texas.

Q All right. Do you issue the coverage to any individuals in Texas?

A We do not have individual contracts.

Q With individual policyholders?

A With individual policyholders.

Q In other words, if I wanted to get this coverage I could not get it as a single individual; I would have to be an employee of some corporation?

A That is correct.

Q And are the corporations who have this coverage, are they corporations who do business in other states as well as in Texas?

A They could, yes.

Q Well, could you give me some examples of some who have the coverage who do business both in Texas and in other states?

A Ling-Tempco-Vought.

Q All right.

A And its affiliated corporations.

[22] Q All right. Mack Trucks?

A I presume so, yes. Although we did not issue this contract.

Q No, I understand. United Auto Workers Plan?

A I'm not aware that there is a United Auto Workers Plan per se.

Q Well, how about Ford Motor Company or Chrysler Corporation?

A Yes.

Q They are issued this type of coverage by Group Life And Health Insurance Company as to their Texas employees?

Excerpts from Deposition of Steve G. McDonald

A No, sir.

Q Well, how do you get involved with their employees; by you I mean your Group Life And Health Insurance Company?

A Through participating plan agreements in those instances. Those coverages are issued by the Michigan—I don't actually know whether it was issued by Michigan Blue Cross or Michigan Blue Shield but one of the Michigan plans.

Q But Group Life And Health Insurance Company services this plan for employees of those corporations who are physically in Texas?

A Yes, on behalf of that—the other plan.

* * * *

[33] Q How many filings have there been roughly as best you can approximate—policy forms which apply to drugs under hospital coverage?

A Any number I would get would be the shearest [*sic*] speculation because it goes back to 1939, policy forms have been issued since that date.

Q I'm going to hand you what has been marked as Deposition Exhibit 1 to Miss Judy Johnson's deposition which is the Participating Drug Pharmacy Agreement and ask you if that has ever been filed with the Commissioner of Insurance of the State of Texas?

A This form was filed when the Form CC-OHDS-2 was filed in 1969.

Q All right. Now, where do we have showing that that was included in the filing?

A There's reference to it in the March 14, 1969 letter from me to Mr. McAnelly.

Q All right. And that was the letter where the policy form was disapproved?

A Yes, sir.

Excerpts from Deposition of Steve G. McDonald

Q Now, in the exemption order does the exemption order refer to Deposition Exhibit 1 to Miss Judy Johnson's deposition?

[34] MR. KAISER: Counsel, the exemption order speaks for itself. There's no need for the witness to read the exemption order into the record. It's attached as an exhibit.

MR. PULLEN: I didn't ask him to read it into the record. I just asked if he sees any reference to BD-1 PGPA-1.

MR. KAISER: Counsel, why don't you read it for yourself.

MR. PULLEN: All right. I will answer it. I see no reference.

MR. KAISER: Fine. Let the record so reflect Mr. Pullen sees no reference.

Q (By Mr. Pullen) As you read the exemption order do you see anything that has reference to it?

MR. KAISER: I'll instruct the witness not to answer the question. The document is already attached as an exhibit.

Q (By Mr. Pullen) Does the State Board of Insurance to your knowledge have jurisdiction over independent pharmacies?

A Not to my knowledge.

* * * *

[46] Q (By Mr. Pullen) I'm now going to hand you Deposition Exhibit 46 which is a letter to you dated February 25th, 1969, from Richard J. Patterson and ask you to read that. You did receive that letter, did you not?

A I assume I did.

Q All right. Now, at the end of the second paragraph there is some language that says otherwise your plan would be exposed to antitrust action by the Justice

Excerpts from Deposition of Steve G. McDonald

Department. Do you know exactly what that is referring to?

MR. KAISER: Are you asking the witness to explain what the author of this document is saying?

MR. PULLEN: If he knows.

MR. KAISER: You are not required now to speculate on what he was thinking of when he wrote the letter.

MR. PULLEN: If he knows.

[47] THE WITNESS: I don't know what he was thinking. To my knowledge I never discussed this with the gentleman other than receiving the letter.

Q (By Mr. Pullen) Well, did you attempt to check that statement out to see whether in your opinion your company would be exposed to any antitrust problems?

MR. KAISER: I'm going to object to that and ask the witness not to answer it. It calls for a conclusion of law.

MR. PULLEN: I just asked him if he checked it out.

MR. KAISER: I'll let him answer whether or not he checked it out.

THE WITNESS: Yes.

Q (By Mr. Pullen) Did you write any memorandum on your investigation?

MR. KAISER: Now, you converted a checkout into an investigation. Are you talking about checking it out?

Q (By Mr. Pullen) On the checkout?

A I do not recall.

(Deposition Exhibit Number 47 was marked for identification and a Xerox copy will be attached to the deposition.)

Q (By Mr. Pullen) I'm going to hand you [48] Deposition Exhibit 47 which is a letter from you to Richard J. Patterson dated February the 12th, 1969, and ask you if that letter was sent.

A I assume it was.

Excerpts from Deposition of Steve G. McDonald

Q All right. The next to the last paragraph refers to the contract with the participating pharmacist and also mentions the use of an assignment and then the last sentence refers to a revision of our enabling statute. What did you mean by that paragraph?

MR. KAISER: You are asking what he's referring to when he uses the term enabling statute?

Q (By Mr. Pullen) Yes. What statute specifically does that refer to?

A It probably refers to both Chapter 3 and Chapter 20 of the insurance code, perhaps maybe more—I should say the Texas Insurance Code.

Q What was the problem with the enabling statute that you were concerned with?

A Well, the enabling statutes do not specifically authorize contracts with pharmacists.

Q Was that the problem you were concerned with there?

A One question we were dealing with at this time.

* * * *

[51] Q (By Mr. Pullen) All right. Mr. McDonald, do you know the reason why you have a non-profit corporation which owns all of the stock of a profit corporation and I'm specifically with reference to group—I think it's Group Hospital Service, Inc., is that the profit corporation?

A Hospital Service, Inc. is the non-profit hospital service corporation.

Q All right. The profit corporation is which one?

A Group Life And Health Insurance Company.

Q All right. Now, what is the reason for having that corporation own the stock of Group Life And Health Insurance Company which is a non-profit corporation—which is, I'm sorry, profit corporation?

Excerpts from Deposition of Steve G. McDonald

A I think we better repeat that question and be sure we've got the corporations right. I couldn't follow you.

[52] MR. PULLEN: All right. Would you repeat the question?

(The above question was read back by the Court Reporter.)

THE WITNESS: As I think I stated previously I was not associated with Group Hospital Service. Inc. at the time that Group Life And Health Insurance Company was acquired. It is my understanding that it was a policy decision. It was an investment made by the corporation.

MR. KAISER: You used the word acquired. Do you mean organized?

THE WITNESS: No, it was an existing charter that was purchased.

* * * *

[55] Q (By Mr. Pullen) Mr. McDonald, what is the reason Blue Shield went into the prepaid prescription coverage as a result of the United Auto Workers Plan for such coverage for members of that union in the State of Texas?

A To the best of my knowledge the U.A.W. Negotiated Plan For Automotive Workers was the first prescription drug program of this type.

Q All right. And is that what led Blue Cross or Blue Shield into the coverage in Texas so that they could participate?

A It commenced our consideration of it.

Q All right. That's fine.

A —of the question.

* * * *

Excerpts from Deposition of Steve G. McDonald

[57] . . . [A]ttached to the letter is a Participating Plan Agreement to which you've already testified. Would you explain to me why this document is marked filed as opposed to being marked in some other manner?

A It's marked filed because the Participating Plan Agreements are not required to be approved under the statute but are filed with the Insurance Department for informational purposes.

• • • •

DRUG SUPPLEMENT POLICY OF GROUP LIFE AND HEALTH INSURANCE COMPANY, DATED APRIL 1, 1969, DISAPPROVED BY ORDER NO. 29701 OF TEXAS COMMISSIONER OF INSURANCE, DATED JUNE 18, 1969 ("EXHIBIT 37" TO DEPOSITION OF STEVE G. McDONALD, NOVEMBER 21, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

GROUP LIFE & HEALTH

Insurance Company

[LOGO]

Dallas, Texas

has issued this

DRUG SUPPLEMENT

to the

EXPERIENCE RATED GROUP MEDICAL-SURGICAL INSURANCE POLICY

No. 123456

issued heretofore or simultaneously herewith, to

XYZ COMPANY, INC.

(therewith and herein called the Employer)

as of April 1, 1969 (herein called the supplemental policy date)

and thereby agrees to provide the additional benefits detailed herein,

[Disapproved By Order No. 29701, Jun. 18, 1969, Commissioner of Insurance, State of Texas]

all in accordance with the conditions and provisions hereof, including those set out on the following pages which are a part of this supplement as fully as if recited over the signatures hereto affixed.

This supplement becomes effective on the supplemental policy date, and is issued in consideration of the application herefor made by the Employer. It will be continued in force subject to the timely payment of premiums herefor, until terminated in accordance with the provisions of the Article captioned "Termination of Drug Coverage."

IN WITNESS WHEREOF, the Insurer has caused this supplement to be executed at its Home Office in Dallas, Texas.

President

Countersigned:

Registrar

[Disapproved By Order No. 29701, Jun. 18, 1969,
Commissioner of Insurance, State of Texas]

ARTICLE I—SUPPLEMENTAL DEFINITIONS

AS USED HEREIN:

A. GROUP HOSPITALIZATION CONTRACT means an instrument issued by Group Hospital Service, Inc. of Dallas, Texas to the Employer, bearing the same number as that appearing on the "Experience Rated Group Medical-Surgical Insurance Policy" described on the face page hereof, including any supplements thereto.

B. GROUP MEDICAL-SURGICAL INSURANCE POLICY means the "Experience Rated Group Medical-Surgical Insurance Policy" described on the face page hereof.

C. BASIC COVERAGE means the total amount of protection afforded a participant by both the group hospitalization contract and the group medical-surgical insurance policy on account of expense incurred for drugs and medicines.

D. COVERED DRUGS means any Prescription Legend Drug or injectable insulin:

(1) which is ordered by a physician;

(2) for which a written prescription order is customarily prepared;

(3) for which a separate charge is customarily made; and

(4) which is not entirely consumed at the time and place that the prescription order is written.

E. PRESCRIPTION LEGEND DRUG means any medicinal substance—the label of which, under the Federal Food, Drug, and Cosmetic Act, as amended, is required to bear the legend: "Caution: Federal Law prohibits dispensing without prescription."

F. DRUG DEDUCTIBLE means the amount to be paid by a participant toward the cost of the initial purchase of each covered drug and toward the cost of each refill purchase of each covered drug and for each such purchase and is equal to the amount specified in Item 20 of the schedule.

G. PRESCRIPTION ORDER means a request for medication by a physician.

H. PHARMACY means a licensed establishment where Prescription Legend Drugs are dispensed by a person who is not a practitioner of the healing arts and who is licensed to dispense such drugs under the laws of the state in which he practices.

I. PROVIDER means any pharmacy, physician, or any other person or organization legally licensed to dispense drugs.

J. PARTICIPATING PROVIDER means a provider located in the State of Texas with which the Insurer or Group Hospital Service, Inc. of Dallas, Texas, has entered into a written contract for the rendition of covered drugs for which benefits are provided by this supplement, or any provider located outside the State of Texas with which any other Blue Cross or Blue Shield Plan has entered into such a contract.

K. NON-PARTICIPATING PROVIDER means a provider who is not a participating provider.

ARTICLE II—TERMS AND PROVISIONS

A. All definitions, limitations, and provisions recited in the group medical-surgical insurance policy are hereby adopted and shall be construed to apply in like manner and with equal force to this supplement, any provisions insofar as they are in conflict with provi-

sions herein contained, in which case the provisions of this supplement shall govern in any interpretations of rights or obligations accruing hereunder.

B. It is hereby specially declared that the non-duplication provisions set forth in Article IV, Section F, of the group medical-surgical insurance policy are applicable to this supplement except insofar as they are modified by the provisions of the following subsections:

1. Determination of drug benefits under this supplement shall be made in relation to each "claim," consisting of any combination of charges for covered drugs which are incurred within a calendar year and submitted at one time by or on behalf of a participant to the Insurer at his request for payment of drug benefits applicable thereto.

2. When the non-duplication provisions are applicable, the benefits of the other coverage and all benefits provided under the basic coverage on the items composing the claim shall be deducted from the charges for all such items, and the Insurer will pay the remainder; provided, however, that in no event shall these provisions be construed to increase the amount of total benefits which would be payable under this supplement on account of such claim in the absence of other coverage.

ARTICLE III—BENEFITS

A. Subject to the exclusions, limitations, and all other terms and provisions set forth herein, any participant shall be entitled to receive covered drugs from any participating provider as a benefit hereunder and shall be required to pay no more than the drug deductible for each of such covered drugs.

B. Any participant receiving covered drugs from a non-participating provider shall be entitled to benefits equal to 75% of the result of the usual and customary charges for such covered drugs as determined by the Insurer, reduced by the drug deductible for such covered drugs; except that for covered drugs received from a non-participating provider located outside of the State of Texas, such participant shall be entitled to benefits equal to 100% of the usual and customary charges for such covered drugs, reduced by the drug deductible for each such covered drugs.

C. Payment of benefits by the Insurer to the provider or to the Employer, as the Insurer may elect, shall constitute full discharge of all responsibility of the Insurer to the employee on account of care rendered to any participant under his coverage.

ARTICLE IV—LIMITATIONS AND EXCLUSIONS

In addition to the limitations and exclusions stipulated in Article VI of the group medical-surgical insurance policy, it is provided that no drug benefit shall be available for any of the following:

A. Any charge for a contraceptive medication, even if such medication is a Prescription Legend Drug, and any charge for therapeutic devices or appliances (including but not by way of limitation, hypodermic needles, syringes, support garments, and other non-medicinal substances) regardless of their intended use.

B. Any charge for services other than Covered Drugs, including administration of a Prescription Legend Drug or injectable insulin.

C. The charge for more than a 34-day supply of a medication, except that Blue Cross-Blue Shield will cover

100 unit doses (e.g. tablet or capsule) of a natural thyroid product and 100 unit doses of nitroglycerine.

D. The charge for any prescription refill in excess of the number specified by the physician, or any refill dispensed after one year from the physician's order.

E. Covered Drugs for which no charge is customarily made.

F. Covered Drugs to the extent that a benefit is provided therefor under the basic coverage.

ARTICLE V—TERMINATION OF DRUG COVERAGE

A. This supplement and coverage of all participants hereunder shall automatically terminate:

1. When the group medical-surgical insurance policy is terminated for any reason;
2. Upon default in payment of supplemental premiums, subject to the grace period and reinstatement provided for in the group medical-surgical insurance policy;
3. Upon cancellation of this supplement in any manner as specified in the group medical-surgical insurance policy for cancellation thereof.

B. The coverage of any participant under this supplement shall automatically terminate when his coverage under the group medical-surgical insurance policy is terminated, subject, however, to refund of supplemental premiums paid in advance, as therein provided.

C. Under no circumstances shall the Plan be obligated to notify any participant of the termination of this supplement or of his coverage hereunder.

Drug Supplement Policy Disapproved June 18, 1969

D. No conversion privilege afforded a participant under the group medical-surgical insurance policy shall be deemed to apply to this supplement.

ARTICLE VI—GENERAL PROVISIONS

A. DISCLOSURE AUTHORIZATION. In consideration of the Insurer's having waived physical examination in connection with the application herefor, the employee on behalf of himself and his covered dependents and sponsored dependents shall be deemed to have authorized any provider to make available to the Insurer information relating to all prescription orders, copies thereof and other records as needed by the Insurer.

B. The Insurer shall not be liable for any claim or demand for injuries or damage arising out of or in connection with the manufacturing, compounding, dispensing or use of any Prescription Legend Drugs or insulin, whether or not covered under this supplement.

C. The Insurer reserves the right to deny benefits for any drug prescribed or dispensed in a manner contrary to normal medical or pharmaceutical practice.

DRUG SUPPLEMENT POLICY OF GROUP LIFE AND HEALTH INSURANCE CO., DATED OCTOBER 1, 1974, APPROVED BY ORDER NO. 45511 OF TEXAS COMMISSIONER OF INSURANCE, DATED OCTOBER 1, 1974 ("EXHIBIT 39" TO DEPOSITION OF STEVE G. McDONALD, NOVEMBER 21, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

[LOGO]

GROUP LIFE & HEALTH INSURANCE CO.

(Herein called Blue Shield of Texas)

Dallas, Texas

has issued this

DRUG SUPPLEMENT

to the

EXPERIENCE RATED GROUP HOSPITALIZATION AND MEDICAL-SURGICAL CONTRACT

No. 34567

issued heretofore or simultaneously herewith, to

ABC COMPANY

(therewith and herein called the Employer)

as of October 1, 1974 (herein called the supplemental contract date)

and thereby agrees to provide the additional benefits detailed herein,

[Approved By Order No. 45511, Oct. 1, 1974, Commissioner of Insurance, State of Texas]

all in accordance with the conditions and provisions hereof, including those set out on the following pages which are a part of this supplement as fully as if recited over the signatures hereto affixed.

This supplement becomes effective on the supplemental contract date, and is issued in consideration of the application herefor made by the Employer. It will be continued in force subject to the timely payment of premiums herefor, until terminated in accordance with the provisions of the Article captioned "Termination of Drug Coverage."

IN WITNESS WHEREOF, Blue Shield of Texas has caused this supplement to be executed at its Home Office in Dallas, Texas.

/s/ Thomas Beauchamp, Jr.
President

/s/ Boone Powell
Secretary

Countersigned:

Registrar

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

ARTICLE I—SUPPLEMENTAL DEFINITIONS

AS USED HEREIN:

A. BASIC CONTRACT means the "Experience Rated Group Hospitalization and Medical-Surgical Contract" described on the face page hereof.

B. BASIC COVERAGE means the total amount of protection afforded a participant by the basic contract on account of expense incurred for drugs and medicines.

C. COVERED DRUGS means any Prescription Legend Drug or injectable insulin:

(1) which is ordered by a physician;

(2) for which a written prescription order is customarily prepared;

(3) for which a separate charge is customarily made;

(4) which is not entirely consumed at the time and place that the prescription order is written; and

(5) which is received by the participant while covered hereunder.

D. PRESCRIPTION LEGEND DRUG means any medicinal substance—the label of which, under the Federal Food, Drug, and Cosmetic Act, as amended, is required to bear the legend: "Caution: Federal Law prohibits dispensing without prescription."

E. DRUG DEDUCTIBLE means the amount to be paid by a participant toward the cost of the initial purchase of each covered drug and toward the cost of each refill purchase of each covered drug and for each such purchase and is equal to two dollars ($2.00).

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

F. PRESCRIPTION ORDER means a request for medication by a physician.

G. PHARMACY means a licensed establishment where Prescription Legend Drugs are dispensed by a person who is not a practitioner of the healing arts and who is licensed to dispense such drugs under the laws of the state in which he practices.

H. PROVIDER means any pharmacy, physician, or any other person or organization legally licensed to dispense drugs.

I. PARTICIPATING PROVIDER means a provider located in the State of Texas with which Blue Shield of Texas or Group Hospital Service, Inc. of Dallas, Texas, has entered into a written contract for the rendition of covered drugs for which benefits are provided by this supplement, or any provider located outside the State of Texas with which any other Blue Cross or Blue Shield Plan has entered into such a contract.

J. NON-PARTICIPATING PROVIDER means a provider who is not a participating provider.

ARTICLE II—TERMS AND PROVISIONS

A. All definitions, limitations, and provisions recited in the basic contract are hereby adopted and shall be construed to apply in like manner and with equal force to this supplement and any other provisions insofar as they are in conflict with provisions herein contained, in which case the provisions of this supplement shall govern in any interpretation of rights or obligations occuring hereunder.

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

B. It is hereby specially declared that the non-duplication provisions set forth in Article V, Section E, of the basic contract are applicable to this supplement except insofar as they are modified by the provisions of the following subsections:

1. Determination of drug benefits under this supplement shall be made in relation to each "claim," consisting of any combination of charges for covered drugs which are incurred within a calendar year and submitted at one time by or on behalf of a participant to Blue Shield of Texas at his request for payment of drug benefits applicable thereto.

2. When the non-duplication provisions are applicable, the benefits of the other coverage and all benefits provided under the basic coverage on the items composing the claim shall be deducted from the charges for all such items, and Blue Shield of Texas will pay the remainder; provided, however, that in no event shall these provisions be construed to increase the amount of total benefits which would be payable under this supplement on account of such claim in the absence of other coverage.

ARTICLE III—BENEFITS

A. Subject to the exclusions, limitations, and all other terms and provisions set forth herein, any participant shall be entitled to receive covered drugs from any participating provider as a benefit hereunder and shall be required to pay no more than the drug deductible for each of such covered drugs.

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

B. Any participant receiving covered drugs from a non-participating provider shall be entitled to benefits equal to 75% of the result of the reasonable charge for such covered drugs as determined by Blue Shield of Texas, reduced by the drug deductible for such covered drugs; except that for covered drugs received from a non-participating provider located outside of the State of Texas, such participant shall be entitled to benefits equal to 100% of the reasonable charge for such covered drugs, reduced by the drug deductible for each such covered drugs.

C. Payment of benefits by Blue Shield of Texas to the provider or to the employee, as Blue Shield of Texas may elect, shall constitute full discharge of all responsibility of Blue Shield of Texas to the employee on account of care rendered to any participant under his coverage.

ARTICLE IV—LIMITATIONS AND EXCLUSIONS

In addition to the limitations and exclusions stipulated in Article VIII of the basic contract, it is provided that no drug benefit shall be available for any of the following:

A. Any charge for a contraceptive medication, even if such medication is a Prescription Legend Drug, and any charge for therapeutic devices or appliances (including but not by way of limitation, hypodermic needles, syringes, support garments, and other non-medicinal substances) regardless of their intended use;

B. Any charge for services other than Covered Drugs, including administration of a Prescription Legend Drug or injectable insulin;

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

C. The charge for more than a 34-day supply of a medication, except that Blue Shield of Texas will cover 100 unit doses (e.g. tablet or capsule) of a natural thyroid product and 100 unit doses of nitroglycerine;

D. The charge for any prescription refill in excess of the number specified by the physician, or any refill dispensed after one year from the physician's order;

E. Covered Drugs for which no charge is customarily made;

F. Covered Drugs to the extent that a benefit is provided therefor under the basic coverage;

G. Covered Drugs which are not medically necessary.

ARTICLE V—TERMINATION OF DRUG COVERAGE

A. This supplement and coverage of all participants hereunder shall automatically terminate:

1. When the basic contract is terminated for any reason;

2. Upon default in payment of supplemental premiums, subject to the grace period and reinstatement provided for in the basic contract;

3. Upon cancellation of this supplement in any manner as specified in the basic contract for cancellation thereof.

B. The coverage of any participant under this supplement shall automatically terminate when his coverage under the basic contract is terminated, subject, however, to refund of supplemental premiums paid in advance, as therein provided.

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

Drug Supplement Policy Approved October 1, 1974

C. Under no circumstances shall Blue Shield of Texas be obligated to notify any participant of the termination of this supplement or of his coverage hereunder.

D. No conversion privilege afforded a participant under the basic contract shall be deemed to apply to this supplement.

ARTICLE VI—GENERAL PROVISIONS

A. DISCLOSURE AUTHORIZATION. In consideration of Blue Shield of Texas having waived a physical examination in connection with the application herefor, the employee on behalf of himself and his covered dependents shall be deemed to have authorized any provider to make available to Blue Shield of Texas information relating to all prescription orders, copies thereof and other records as needed by Blue Shield of Texas.

B. Blue Shield of Texas shall not be liable for any claim or demand for injuries or damage arising out of or in connection with the manufacturing, compounding, dispensing or use of any Prescription Legend Drug or insulin, whether or not covered under this supplement.

C. Blue Shield of Texas reserves the right to deny benefits for any drug prescribed or dispensed in a manner contrary to normal medical or pharmaceutical practice.

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

EXCERPTS FROM DEPOSITION OF ALBERT W. POGUE, DECEMBER 30, 1975

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

---

* * * *

[3] DIRECT EXAMINATION

Questions by Mr. Kaiser:

Q Would you state your full name, please?
A Albert W. Pogue.
Q Mr. Pogue, do you go by any nickname?
A I go by "Woody," yes.
Q Mr. Pogue, what is your residence address?
A 5605 Burrough Cove, Austin.
MR. PULLEN: How is that Burrough spelled?
A B-u-r-r-o-u-g-h (spelling).
Q Mr. Pogue, by whom are you employed?
[4] A State Board of Insurance.
Q Do you have a title, Mr. Pogue?
A Yes. I am Division Manager of the Policy Approval Division.

* * * *

[6] Q Mr. Pogue, how long have you been with the State Board of Insurance?
A Seven years.
Q What were your previous positions with the State Board?
A I was previously a policy analyst, actuarial field examiner, supervisor of the Life Policy Unit, manager of Headquarters Section, and then eventually Division Chief.
Q You said that you were a field examiner?
A Actuarial field examiner.
Q What does an actuarial field examiner do?

Excerpts From Deposition of Albert W. Pogue

A Basic duties are to check the reserve—verification on reserves for the domestic life companies in the State of Texas.

Q All right. And then you said after your period as field examiner you moved to what position?

A I moved to the supervisor of the Life Policy Unit, then I went back to the field.

[7] Q What did your duties entail as a supervisor of the Life Policy Unit?

A I was in charge of a group of analysts whose responsibilities were to approve or disapprove any life contract, annuity contract or credit life contract submitted for use in the State of Texas.

Q All right. What guidelines did you use in determining whether or not to approve or disapprove credit life contracts?

A We have the State Insurance Code, our statutes there as well as court orders, commissioners' orders and departmental regulations.

Q After your tenure as supervisor of the Life Policy Unit where did you go then?

A I went back to the field again.

Q In what capacity?

A As an actuarial examiner again.

Q And then after the period of time that you were an actuarial examiner—

A I came back in as supervisor of the Life Policy Unit for three months prior to being promoted to Headquarters Section Manager.

Q All right, sir. And then what was your next position?

A My next position was Division Chief.

Q Of the—

[8] A Policy Approval Division which is a new name under the reorganization for the old Life Division.

Q I see. Now, you referred a moment ago to the Life Policy Unit.

Excerpts From Deposition of Albert W. Pogue

A The Life Policy Unit is a section within the Life Division. The Life Division is made up of a Life Policy Unit section, a Group Life and—Group Accident and Health Section, Individual Accident and Health Section and Credit Life Section.

Q From the time you became the supervisor of the Life Policy Unit up until today have you basically or generally been in the same division of the State Board of Insurance?

A I have been in the same division of the State Board of Insurance since I went to work for them.

Q Can you tell me what year you went to work for the State Board of Insurance?

A 1969.

MR. PULLEN: I am sorry.

A 1969.

Q Can you tell me generally what your duties were as supervisor of the Life Policy Unit?

A As supervisor of the Life Policy Unit my basic duties were to supervise six analysts whose duties were to review all life contracts, annuity contracts, group annuity contracts and credit life and credit A and H contracts submitted [9] for use in the State of Texas. I myself handled all of the difficult contracts, the difficult mathematical contracts that the analysts could not, I composed all of the approval and disapproval orders for that particular unit.

Q When did you become Manager of the—or Division Manager of the Policy Approval Division of the State Board of Insurance?

A The Division Chief job or Division Manager job was effective November 1, 1975.

Q How long have you held the same responsibilities as you presently hold?

A Basically the same responsibilities that I hold now I have had since January 1, 1974.

Excerpts From Deposition of Albert W. Pogue

Q Am I to understand, Mr. Pogue, that the difference came in the reorganization of the State Board?

A Right.

Q I don't want to make a statement; I want to ask a question. Have your duties always been the same however your title changed?

A My duties since January 1, 1974, have been basically the same as they are right now other than a title change effective November 1.

Q Mr. Pogue, what are your responsibilities and your duties in your present position as Division Manager of the Policy Approval Division?

[10] A My present duties encompass the supervision of four distinct sections, the Life Policy Section, the Group Life and Group A and H Section, the Individual Accident and Health Section and Credit Life Section. My primary duties are administrative responsibilities in these areas.

Q Do you have supervisory responsibility?

A I have direct supervisory responsibility over all the people in my division, and I have four supervisors under me that head up these four different sections.

Q To whom do you report, Mr. Pogue?

A I report to the Commissioner.

Q And who is presently the Commissioner of the State Board of Insurance?

A Joseph Hawkins.

Q Just for my own information, how long has Mr. Hawkins been the Commissioner?

A I believe it was effective permanently on either September 1 or October 1, 1975, one of those two dates.

Q Was Mr. Hawkins' predecessor Mr. Joe Christy?

A No. Mr. Hawkins' predecessor was Don B. Odum.

Q Was Joe Christy at one time the Insurance Commissioner?

Excerpts From Deposition of Albert W. Pogue

A No. Joe Christy has always been the Chairman of the State Board of Insurance.

Q I understand. Does the State Board of Insurance consist of more than one Commissioner?

[11] A The State Board of Insurance has one Commissioner and a three-member Board. The Commissioner answers to the three-member Board.

Q Does the Commissioner have any authority over the Board per se? Can he reverse a decision of the Board or overrule a decision of the Board?

A Right the opposite. The Board can overrule a decision of the Commissioner.

Q Mr. Pogue, were you served with a subpoena duces tecum to appear at this deposition?

A Yes, I was.

Q Have you brought the documents specified in the subpoena?

A Yes, I have.

Q May I see them, please?

MR. KAISER: Let's go off the record.

(There was a discussion off the record.)

Q Mr. Pogue, are you the custodian of the records maintained in the Policy Approval Division of the State Board of Insurance?

A Yes, I am responsible for the records.

Q Are the records maintained in the Policy Approval Division of the State Board of Insurance kept under your supervision and control?

A Yes, they are until such time as we have accumulated records for ten years, and then we send the contracts over [12] to Archives which are still in my control because I have got a log on them. I can call for them at any time. Correspondence we keep for two years, and then we send it to Archives, and again it is logged and in my control.

Excerpts From Deposition of Albert W. Pogue

Q Mr. Pogue, I am going to hand you now—
MR. KAISER: Off the record.

(There was a discussion off the record.)

MR. KAISER: We stipulate to the introduction of Xerox copies in lieu of the originals.
MR. CHURCH: Which the witness has identified.
Q Mr. Pogue, I am going to hand you Deposition Exhibits 51 through 62, inclusive, and these documents have been marked this morning. I would ask you to look at them, sir, and tell me if those are a part of the documents which you have brought—or those are documents which you have brought pursuant to the subpoena duces tecum.
A Yes, they are exact copies of my original files.
Q Mr. Pogue, do the documents which you are presently holding in your hand which are marked as Deposition Exhibits 51 through 62, inclusive, constitute a part of the official records of the State Board of Insurance?
A They do.
Q Mr. Pogue, would you explain for me, please, the function of the Approval Division of the State Board of Insurance?
A Our responsibility is to review all contracts of individual [13] life and individual annuities, group annuities, variable annuities, both individual and group, group A and H contracts, group life contracts, combination group accident, health and life contracts, blanket accident and health contracts, credit life contracts, accident and health contracts, individual accident and health contracts that are to be sold or issued or sold to be issued for delivery in the State of Texas.
Q With a view toward doing what do you review these contracts?
A We review these contracts to make sure that they comply with statutory requirements as set forth in the

Excerpts From Deposition of Albert W. Pogue

Insurance Code or that they comply with rules and regulations promulgated by the Board or by the Commissioner.
Q Mr. Pogue, are you familiar with the insurance business transacted by Group Life and Health Insurance Company which is also known as Blue Shield of Texas?
A Yes.
Q What is a Chapter 3 insurance company, Mr. Pogue?
A A Chapter 3 insurance company is a stock life company.
Q Do you know how Chapter 3 companies are formed?
A Chapter 3 companies can be formed when they come in and request a charter, put up the minimum capital and surplus of $200,000.00.

* * * *

[16] Q Mr. Pogue, when you say 3.53 are you referring to Article 3.53 of the Insurance Code?
A I am referring to Article 3.53 of the Texas Insurance Code.
Q To your knowledge, Mr. Pogue, is Blue Shield a Chapter 3 company?
A To my knowledge, Group Life and Health is a Chapter 3 company.
Q All right, sir. To your knowledge is Group Life and Health Insurance Company a domestic insurance company?
A It is a domestic insurance company of the State of Texas.
Q To your knowledge, Mr. Pogue, what kind of insurance coverage is Blue Shield authorized by the State Board of Insurance to issue?
A Group Life and Health is authorized to issue life and health coverage.
Q May we also say group coverage included?
A Group life and group accident and health coverage.
Q Mr. Pogue, are Chapter 3 companies required to submit anything to the State Board of Insurance prior to

issuing a new policy of insurance in the State of Texas?

A A Chapter 3 company operating in the State of Texas is required to submit all policy contracts which they propose to market to the citizens of the State of Texas for [17] approval prior to the issuance of these contracts.

Q May a Chapter 3 company—and again I am referring only to domestic Chapter 3 companies—may a Chapter 3 company issue a new policy in the State of Texas without submitting it first to the State Board of Insurance?

A They may do it, but if they do it they are violating Texas law.

Q I understand. A moment ago you said that a domestic Chapter 3 company was required to submit all proposed policy forms—

A Correct.

Q —to the State Board of Insurance?

A Right.

Q What is the source of that requirement, Mr. Pogue?

A Our State Insurance Code.

Q Do you know any specific provision of the Code?

A Article 3.42.

Q After submission of a new policy of insurance or a new form of policy of insurance, what action may the State Board then take with respect to the policy?

A The Board may—the Commissioner may approve or disapprove the contract.

Q Does he have any other alternatives? When I say "he" I mean the Commissioner.

A The Code gives the Commissioner of Insurance a wide parallel of powers. The Code also exempts certain companies from [18] approval of contracts. The Commissioner upon his discretion can deviate from the Code as long as he does not take upon himself a legislative responsibility.

Q Now, I believe you said that the Code exempts certain policies of insurance. Is it not correct to say that the Code gives the Commissioner authority to exempt certain policies of insurance?

A The Commissioner's duties are to carry out the requirements of the statutory legislative directives of the Code, and the Code itself does exempt certain organizations from filing contracts, and if the Commissioner then exempts an organization from filing the contract it is set forth by statute. He is merely carrying out the directives of the Legislature.

Q Mr. Pogue, if a proposed policy that is filed with the State Board of Insurance is disapproved, does the Commissioner then have statutory or regulatory authority to issue an exemption for that policy?

A If a contract is disapproved on the division level, the company which had the contract disapproved has the right to appeal to the Commmissioner for a change in his opinion or ruling on the contract. If the Commissioner deems that an error was made in the disapproval of the contract he can reverse the decision. If he deems that he was correct, then the party has the right to appeal to the State Board [19] of Insurance the Commissioner's decision. If the Board then deems that the Commissioner was right, they will uphold it, and the next step is the courthouse.

Q Let's talk a little bit more about exemptions. Mr. Pogue, are you familiar with Article 3.42 of the Insurance Code?

A Yes.

Q Do you use that Article and does the Approval Division of the State Board of Insurance use that Article in its day-to-day activities of regulating and governing the insurance business?

A Article 3.42 is the statute within the Code which gives the State Board of Insurance the right to approve or disapprove a contract.

Q All right. Let me hand you Article 3.42, and I will ask you to look at Subparagraph E if you would, please, sir.

MR. CHURCH: Off the record.

(There was a discussion off the record.)

Q Mr. Pogue, in 1969 did the Board of Insurance Commissioners have authority to issue exemptions to certain policies of insurance pursuant to Article 3.42 of the Insurance Code, 3.42-E?

A Article 3.42-E gives the Commissioner the right—and when we are talking about the Board of Insurance Commissioners in here we are talking about the Commissioner of Insurance.

Q All right, sir.

[20] A —the right to exempt from the approval requirements under 3.42 certain documents or contracts if in his wisdom he deems it is not necessary for approval for the protection of the public of the State of Texas.

Q Now, is this one of the regulatory powers of the Commissioner of Insurance?

A That's right.

Q Mr. Pogue, can you tell me what statutory or regulatory requirements there are that govern the decision of the Board or the Commissioner of Insurance to approve, disapprove or exempt a policy?

A Rephrase that, please.

Q Are there any statutory or regulatory requirements that govern the decision of the Board or the Commissioner of Insurance in determining whether or not to disapprove, approve or exempt a policy of insurance?

A Statutory requirements, I would say none, that I know of, other than Article 3.42-E gives the Commissioner the right if in his opinion it does not require approval.

Q Tell me, in determining whether or not to approve or disapprove, whatever you are going to do to a policy,

what statutory or regulatory authority you refer to as your—for guidance.

A I refer to whether I am going to approve in my Division, or disapprove a contract, I refer to the specific portion [21] of the Code in which it applies. Article 3.42 gives us the right to approve or disapprove virtually every type of contract that is utilized in Texas by virtually every type company that operates in Texas, and there are portions of the Code directed at these specific types of contracts, and if it is determined that they meet the statutory requirements set forth in the Code or rules and regulations promulgated by the Board, then a decision is made to approve or disapprove them.

Q All right, sir. Let's assume that a Chapter 3 company files a policy form for approval. Where do you then go to get your statutory or regulatory guidance in determining whether or not to approve the policy?

A Again it boils down to what type contract we are talking about.

Q Let's say it is a life, health and accident policy.

A If we are talking about a life contract we look to Article 3.42 which gives us the right to review the contract, and then Article 3.44 and 3.44-A set out the requirements for the contents of a life contract, individual life contract. Article 3.70 sets out the requirements for the individual life, accident and health contract. Article 3.50 sets out the requirements for a group life contract, and very few articles in the Code can be utilized in the approval of a group accident and health contract. Article 3.42 is our [22] strongest.

Q After being reviewed by the State Board of Insurance, will the action of the State Board ultimately take the form of an official order of the Commissioner of Insurance?

A After being reviewed by the appropriate division within the Board, any formal action taken on a form,

whether it is approved or whether it is disapproved, is done so over the signature of the Commissioner of Insurance.

Q Would that also apply to an exemption?

A It would apply to an exemption on the Commissioner's level, yes.

Q Is the Commissioner the only person at the State Board that can grant an exemption?

A The Commissioner's responsibility at the State Board is to approve or disapprove, or if, in his wisdom, exempt contracts. He is the one responsible for the approval of these contracts.

Q If a new policy form is disapproved by the State Board, what may the submitting insurance company then do with that policy form?

A They may come back to the State Board to the Policy Approval Division, sit down and try to work it out with the supervisors in charge of the particular section, or the analyst, and try to bring it into conformity with the State statutes. In the event that the company feels strongly that they have [23] not violated the statute, and the department on the division level feels that they have violated the statute, then the company has the right to appeal to the Commissioner for a formal hearing on it. The Commissioner will hear both sides of the problem, both staff and company, then after ten days—he will keep his record open for further evidence. At the end of ten days the Commissioner will review the context of the hearing and will make a decision whether or not he feels that the staff made a proper decision on it. Then in the event that he deems that the staff had, he upholds the staff's order and will cut an order saying that the form is still disapproved. In the event that he feels that the staff made a mistake, he will reverse the decision of his order and approve the contract.

A All right, sir. Mr. Pogue, if a policy form is disapproved, may the submitting company then issue the policy?

A If a contract is disapproved and the company issues the contract while it is still in a disapproval status, they have violated State laws.

Q Are there certain penalties prescribed in the Insurance Code for insurance companies who violate the State law?

A There are penalties prescribed. I believe the section of the Code provides for a maximum fine of up to $5,000.00.

• • • •

[25] Q If a new policy form is approved by the State Board, is an order also issued to that effect?

A Yes, they are.

Q After approval of a policy form what may the insurance company then do with that policy?

A The insurance company may solicit business under that contract.

Q Can we say that it is authorized to issue that contract of insurance in the State of Texas?

A It is authorized to issue that contract in the State of Texas subject to the provisions under which it was approved.

Q After approval of a particular policy form, is the submitting insurance company then subject to the continuing regulation and control of the State Board with respect to that policy of insurance?

A Yes, they are. In the event that that contract is changed in any way contentwise, benefitwise, the contract must be resubmitted to the Board under a different form number for reapproval prior to continued use of it. Also there is a continuous monitoring of the use of the

contract through our Claims Section and also through our Examination Section.

* * * *

[28] Q If a new policy form is exempted from the requirements of Article 3.42 by the Commissioner, is an order issued to that effect?

A If there is a contract exempted from approval status, there would be an exemption order cut by the Commissioner.

Q After exemption of a contract, what may the insurance company then do with the policy upon which it has received an exemption?

A If the Commissioner deems that a contract does not need approval and exempts it from the requirements set forth in Article 3.42, the company can utilize the contract or instrument in the same manner as if it had been approved under Article 3.42.

[29] Q After exemption of a policy form, is the insurance company subject to the continuing regulation and control of the State Board with respect to that particular exempted policy?

A Yes, they would be because if a contract—if the Commissioner deems a contract does not need approval under Article 3.42, that does not necessarily mean that the Commissioner has waived the monitoring of the contract and the use of the contract in the State of Texas.

Q May the exemption be withdrawn at any particular time?

A The exemption could be withdrawn in the same manner as an approval could be withdrawn.

Q Can you tell me for what reasons an exemption could be withdrawn?

A The reasons that an exemption could be withdrawn, if it was shown that a contract which the Commissioner exempted was being—contained any unfair, inequitable, misleading, deceptive provisions, was contrary to the law

or public policy of the State in any manner, or if it again was being abused or misused in the solicitation of the contract, if the contract could be shown to be hazardous to the solvency of the company or if the contract could be shown not to be in the best interest of the public of the State of Texas.

Q All right, sir. After an exemption has been granted, are exempt policy forms subject to the same statutory requirements as approved policy forms?

[30] A After a contract has been exempted from the requirements of Article 3.42 as being approved, it does not necessarily exempt the contract from the reserve requirements, et cetera, and so on, in the Code. If there is a specific reserve requirement to be maintained on a contract, whether it is exempt or not, the reserves are going to have to be maintained on that particular contract, and it will be under the constant monitoring of the Board to make sure that the reserves are maintained on the contract, and that can be verified by the year-end annual statement, and again in the three-year physical examination that goes into a company.

Q Mr. Pogue, from a practical standpoint, does the exemption of a policy form have the same effect as approval? I am talking about a practical standpoint to the insurance company.

A All right. From a practical standpoint from the insurance company, if the insurance company receives an exemption order signed by the Commissioner of Insurance of the State of Texas for any particular contract, they utilize that contract then in the same manner as they would have utilized it had it been—received an order approving this contract under Article 3.42 specifically by some appropriate Commissioner's order number.

Q All right, sir. Mr. Pogue, after receiving an exemption, [31] are exempt policy forms treated any differently than approved policy forms with respect to the issuance

of policies by the insurance company and supervision by the State Board?

A The issuance of an exempt contract by a company would be no different than issuing an approved contract by the company. We at the Board expect them to utilize the contract in a manner consistent with State law.

Q All right, sir. From a practical standpoint at the State Board of Insurance, are exempt policies treated the same as approved policies? I am talking about after the exemption has been granted or after the approval has been granted.

MR. PULLEN: I object to that question in that I don't understand the question. Can you specify in what respect, Keith, they are treated the same?

MR. KAISER: In all regulatory respects.

A Repeat that again, please.

Q From a practical standpoint does the insurance—

MR. KAISER: Strike that.

Q From a practical standpoint does the State Board of Insurance treat exempted policies in the same manner that they would treat an approved policy, and by that I mean insofar as the State Board of Insurance's regulatory functions are concerned?

A As far as our regulatory functions on any contract issued [32] by a licensed carrier or an entity in the State of Texas we would treat an approved specimen and an exempt specimen alike.

Q Mr. Pogue, is Blue Shield currently authorized to issue—

MR. KAISER: Strike that.

Q Is Blue Shield currently authorized by the State Board of Insurance to issue a prepaid prescription drug supplement such as the ones I am handing you which have been marked Deposition Exhibit 59 and Deposition Exhibit 60?

A These instruments here are currently on file with the State Board of Insurance by Group Life and Health and are authorized to be used under an exemption order that was cut in 1969. I believe it was 1969.

Q Mr. Pogue, may I see the file that you brought with you this morning containing everything that is in the drug supplement file of Group Life and Health Insurance Company?

(Documents were handed to Mr. Kaiser.)

MR. KAISER: Thank you.

Q Mr. Pogue, are you familiar with Article 21.21 of the Insurance Code which deals with unfair competition and unfair practices in the insurance business?

A Yes, I am familiar with that portion of the Code.

Q In determining whether or not to approve or disapprove a policy form, does the Approval Division of the State Board of Insurance take into consideration the provisions of [33] Article 21.21 of the Insurance Code?

A A Chapter 3 company would fall under the provisions of Article 21.21 of the Code.

Q Well, let me ask my question again. In determining whether or not to approve or disapprove a policy, would the Approval Division of the State Board of Insurance consider the policy form in the light of Article 21.21 of the Insurance Code?

A Yes, they would.

Q To your knowledge, Mr. Pogue, is Article 21.21 one of the regulatory statutes utilized by the Commissioner of Insurance and the State Board of Insurance in performing their functions?

A Yes, it is.

Q Do the State Board of Insurance and the Commissioner of Insurance consider the provisions of that statute in determining whether to approve or disapprove or exempt a policy form?

A Yes. It can play a major role, yes.

Q Are approved policy forms subject to the provisions of Article 21.21?

A Yes.

Q Are exempt policy forms subject to the provisions of Article 21.21?

A Well, if the exemption order exempts it from approval under [34] Article 3.42, in my own opinion, they would still be subject to 21.21 of the Code.

Q Are you familiar with the provisions of Article 21.21-2 of the Insurance Code which is known as the Unfair Claims Settlement Act?

A I am not as familiar with that as our Claims Section would be, no.

Q Can you tell me whether or not approved policy forms are subject to the provisions of Article 21.21-2?

A If it could be shown that a contract was being abused in its claim settlements, then, yes, it would be subject to 21.21-2.

Q Are exempt policy forms subject to the provisions of Article 21.21-2 of the Insurance Code?

A If it could be shown that an exempt contract was abusing the exemption under which it was approved—was exempted—I don't mean the word "approved"—then—and that there was unfair claims settlements involved, then the exemption could be withdrawn, so I would say, yes, it would be subject to that section of the Code.

* * * *

[44] Q And that form was disapproved; is that correct?

A Yes, it was.

Q Now, it refers to a Form CC-OHDS-2 which I believe is Deposition Exhibit 52. Is that correct?

A Yes.

Q Do you know why that was disapproved?

MR. KAISER: Objection. There was formal action taken by the State Board of Insurance which is reflected

in the form of an official order, and that document speaks for itself.

MR. CHURCH: I think he can answer. If he doesn't know, he doesn't know.

Q Do you know why it was disapproved?

A I was not—at that time in 1969, I was not involved with this contract.

Q Well, subsequent to 1969 have you found out why Deposition Exhibit 51 and the form it referred to, which is Deposition Exhibit 52, was disapproved?

A I have reviewed Commissioner's Order Number 29701.

Q Why was it, if you know, again, disapproved?

A The reasons set forth in Commissioner's Order Number 29701 referred to the form as being in violation of 21.21 of the Texas Insurance Code. Order 29701 further stipulates that the provisions of the form violate the antitrust and [45] monopoly statutes of the State.

Q Now, subsequent to that I believe there was an exemption order issued, which is Deposition Exhibit 55.

MR. CHURCH: His original exhibits are not numbered. You will have to give it to him if you want him to look at it.

Q Do you know why the disapproval was changed to an exemption order?

MR. KAISER: The document speaks for itself.

A Am I to answer that?

MR. PULLEN: Yes.

A The order, Commissioner's exemption order, states that the contract was exempt from approval under Article 3.42 so that the Texas domestic company could have the same rights for competitive sale of these as a foreign company.

Q Are there any written guidelines at all setting out the conditions under which exemption orders will be issued with respect to a policy form?

A To particular forms, you mean?

Excerpts From Deposition of Albert W. Pogue

Q Yes.

A None that I know of, no.

Q Then is it a fair statement to say that it is a matter that is fully within the discretion of the State Board of Insurance and its personnel?

A It could be said that it is a matter that can be done if [46] shown in the discretion of the Commissioner that it is in the best interest of the public of the State of Texas.

Q Do you know what factors go into that consideration of what is in the best interest of the public?

MR. KAISER: I think you are asking him to delve into the mind of the Commissioner.

MR. PULLEN: I am asking him if he knows what factors.

MR. CHURCH: If he doesn't know, all he can say is that he doesn't know.

A If it does not violate flagrantly any of the statutes of the Texas Insurance Code, does not violate any of the rules and regulations promulgated by the Board or Commissioner, I think would be factors which would be looked at. That is the best answer I could give.

Q Let me ask you this, Mr. Pogue. I believe you previously testified that in your opinion an exemption order for all practical purposes is the same as an approval of the policy form. Is that correct, what I just said?

A When we used the word "practical," I think the word "practical" was defined to be in terms of the company's using it, and I said for all practical purposes a company would utilize an exempt form in the manner they would utilize an approved form.

* * * *

[52] A All right. Prior to our last Legislature we had what we usually use loosely the term hybrid HMO's attempting to operate in the State. Our last Legislature

Excerpts From Deposition of Albert W. Pogue

gave us the full HMO bill. Contracts of this type here which might be used with a 4509-A or any type organization like that, we were going to approve them, put them on order, and on a limited use order, and that is what this is here, that if we approved a group contract of this type to be used with this hybrid type situation that we would approve it to be extended only for use as the insurer portion of a group comprehensive medical care plan, and it cannot be used for any other purpose, and that is what this contract—

Q Would that approval apply to a plan say that has been in existence for the United Auto Workers providing for prepaid prescription coverage?

A I do not understand your question.

Q In other words, I guess what I really am saying is that this approval is strictly with regard to the HMO type plan; is that correct?

A Hybrid type HMO plan.

Q What is a hybrid type HMO plan?

A Well, the difference between a true HMO and an HMO that is funded mainly by an insurance company—there is quite a bit of difference there.

Q What is the difference?

[53] A Because an HMO is not insurance. The bill tells us that. So we do not look at an HMO as insurance nor as an entity of insurance. Now, if there is a carrier, an entity, a licensed carrier involved such as there was in this one here, then even though they use the loose term HMO, it has been funded primarily by an entity which is a life company, life insurance company.

Q Does the State Board of Insurance have any jurisdiction over independent pharmacists in the State of Texas?

A That is outside of our regulatory control.

Q So would your answer be that there is no jurisdiction as far as you know?

MR. KAISER: You are only required to answer to the best of your knowledge.

A To the best of my knowledge, I know of no statutory jurisdiction over a pharmacy.

Q If an insurance company contracts with a pharmacist, would that contract, to the best of your knowledge, be subject to the jurisdiction and regulatory authority of the State Board of Insurance?

MR. KAISER: I am going to object to the question. It calls for a conclusion of law outside the scope of this man's knowledge.

MR. CHURCH: In the deposition he can either say he does or doesn't know.

[54] MR. KAISER: I understand.

MR. CHURCH: The objection will be at the time either he is going to use them at the trial or not going to use them. Objections mean nothing in the Federal Court. The man can say if he knows or doesn't know.

A That is something I do not know.

Q All right.

A I would hesitate to say.

MR. PULLEN: Are we going to use the same numbers that we used previously on these, Keith?

MR. KAISER: Sure.

Q I am going to hand you what has been already marked as Deposition Exhibit 6 which I believe is to the deposition of Judy Johnson who is an employee of Blue Shield, and ask you to look at that.

A All right.

Q Is that document something that would be subject to the regulatory authority of the State Board of Insurance, to your knowledge?

A To my knowledge, this instrument here would constitute a contract between an entity and a pharmacy for the furnishing of services, and to my knowledge, would only make up a part of a plan of operation of one of

these organizations and would not be a part of the group contract which would require approval.

[55] Q To your knowledge, has the State Board of Insurance ever approved Deposition Exhibit 6 or any similar document?

A To my knowledge, no, we have not.

Q To your knowledge, has this document ever been submitted to the State Board of Insurance for approval?

MR. KAISER: Just a moment. To refresh the witness' recollection I will hand him an exhibit that he might want to refer to. The document I am handing you is attached to Deposition Exhibit 52 which has been identified as coming from the official files of the State Board of Insurance.

A All right.

MR. PULLEN: What was my question?

(The reporter thereupon read aloud as follows:)

"Q To your knowledge, has this document ever been submitted to the State Board of Insurance for approval?"

A The form that you are referring to and I just looked at was submitted attached to Form CC-OHDS-2.

Q Was it approved?

A The form in question—the entire contract was disapproved on Order Number 29701.

Q Was that ever changed?

A The exemption order, I think, eventually resulted in the reversal of the disapproval order in the sense that it exempted this form that we just mentioned from approval.

[56] Q Well, so that the record will be clear, is it your understanding that the State Board of Insurance under the regulatory authority granted it under the Texas Insurance Code has authority to regulate contracts between a company such as Blue Shield and an independent pharmacy?

Excerpts From Deposition of Albert W. Pogue

A My own personal opinion is that this particular contract that you just showed me—

Q You are talking about Deposition Exhibit 6?

A Right. Would be a contract between an entity and a provider which would not be a part of the original or full contract of insurance. The contract would be filed with us for informational purposes which would be a part of a plan of operations, but when we get an entire plan of operations in there are certain aspects of it that we file, certain aspects of it that we approve.

MR. KAISER: That is your opinion?

A That is my opinion.

Q Who else would be able to give an opinion on this in the State Board of Insurance?

A Our legal counsel would be the best advice.

Q Who is that right now?

A Hector De Leon.

* * * *

[58] (The reporter thereupon read aloud as follows:)

"Q Would it be a fair statement to say that as far as the regulatory authority of the State Board of Insurance, it is limited to—and again I am speaking very generally, and as you know—if you don't know it now you are going to know it when I am finished—I am not an expert in this field—basically applied to matters relating to the operations, internal operations, of insurance companies in the State of Texas and to dealings between the company and their policyholders?"

A The primary responsibilities of the State Board of Insurance is that of a regulatory agency to regulate the insurance industry within the State of Texas.

Q To your knowledge, does the State Board of Insurance regulate independent pharmacies in any manner?

A To my knowledge, the State Board of Insurance is not impounded or thrust upon us by the Legislature to regulate pharmaceutical operations.

Excerpts From Deposition of Albert W. Pogue

Q If pharmacies should enter into contracts with insurance [59] companies such as Blue Shield, in your opinion, is that contract subject to regulation by the State Board of Insurance?

A That is a matter that I think would have to be determined by our legal counsel.

Q Do you have any opinion on it?

A My personal opinion—

MR. KAISER: As opposed to a professional opinion.

A In my personal opinion I do not feel that it is a contract that would require approval of the State Board of Insurance.

Q Could you give me some examples, Mr. Pogue, of any areas of regulation which involve contracts between an insurance company and a non-policyholder?

A Would you make your question a little clearer?

Q All right. For example, is it your understanding that the State Board of Insurance has regulatory authority over all contracts of insurance companies?

A It is my opinion that the State Board of Insurance has regulatory authority over any insurance contract that the Texas Insurance Code dictates to us that we do.

* * * *

[61] Q Looking at Deposition Exhibit 6 again which is the participating drug pharmacy agreement—

MR. CHURCH: It has got different things on it and everything else.

Q To the best of your knowledge would the charge to be paid by the insured to the pharmacist as, I believe, a dispensing fee or deductible, affect the rates which Blue Shield would charge or its portion of the amount to be paid?

MR. KAISER: Objection. I don't understand the question.

MR. CHURCH: I couldn't understand it myself. I mean he might be an expert, but I can't understand the

question. Are you asking about something in the contract that is evident? I will stipulate it if the contract says it.

Q This contract, which is Deposition Exhibit 6 to the Judy Johnson deposition, provides for payment to the pharmacist of a professional dispensing fee of two dollars, and that is paid by the customer, not by Blue Shield.

A That is a copayment or deductible is the way I would interpret it.

[62] Q Right.

A And it is fairly knowledgeable in the insurance field, and anyone that would stop and think and use some common sense would know that if there is a deductible involved that the rates charged for the coverage are usually less than if there were no deductible involved.

Q Well, if this contract provided that the—or the Blue Shield contract with its policyholder for prepaid prescription coverage provided that Blue Shield would pay all but two dollars, would that make a difference as far as Blue Shield's premium was concerned or its portion of the coverage?

MR. KAISER: I think you are asking him to look into Blue Shield's business. I don't think he has testified he has any expertise in that.

MR. CHURCH: If he knows.

A I am going to merely speak from a personal opinion.

Q That is all we can ask you.

A My personal opinion, again I repeat, any time there is a deductible involved it is usually rational to think that the deductible has been taken into account in determining the premium structure so the premium structure without one would be higher usually than one with one. That is just overall.

* * * *

[65] REDIRECT EXAMINATION

Questions by Mr. Shaddox:

Q Who prescribes the regulatory authority in the State Board of Insurance?

A The Legislature.

Q Is that codified? Is that written authorization?

A The only way that we have a law in our Code Book is a law that is enacted by the Legislature.

Q What statute or rules or regulations govern the State Board of Insurance when prescribed by the Legislature?

A Our Texas Insurance Code.

Q If a contract encompasses insurance coverage, does the State Board then regulate those aspects of the contract?

A We would regulate the aspects of insurance.

Q That would be whether or not the contract was with a druggist or farmer or anyone else in the event that the contract encompassed insurance coverage, it is regulated by your department, would you then have regulatory authority over it?

[66] A The Legislature gives us regulatory authority over anything that encompasses insurance in the State of Texas.

Q All right, sir. And the State Board regulates all general aspects of insurance companies such as Blue Shield, do they not?

A We do.

MR. PULLEN: Just a minute. Read that back.

(The reporter thereupon read aloud as follows:)

"Q All right, sir. And the State Board regulates all general aspects of insurance companies such as Blue Shield, do they not?

"A We do."

A If there is an insurance function involved, then the State Board would be in a regulatory position on the case.

Q And you stated earlier that the State Board doesn't regulate rates per se on accident and health contracts, I believe, did you not?

A We do not.

Q Now, what if the solvency or well-being of the company writing the contract was involved, then the powers given to the Insurance Commission would then allow them to regulate that, would they not?

A There is nothing in the Code, to the best of my knowledge, that gives us the right to promulgate any type of rate for a life contract or an accident and health contract.

* * * *

[68] REDIRECT EXAMINATION

Questions by Mr. Kaiser:

Q I am going to hand you what has been marked as Deposition Exhibit Number 55.

A All right.

Q Which is the exemption order. I will ask you, sir, is the exemption order effective today?

A The exemption order was effective September 30, 1969, and has been effective from that date forward.

Q Has this exemption order which is marked Deposition Exhibit 55 been effective since September 30, 1969, up to today?

A Yes.

Q Mr. Pogue, I am going to hand you what has previously been marked as Deposition Exhibit Number 61 which is an official order of the Commissioner of Insurance dated October 1, 1974. I will ask you, sir, has that order been effective from October 1, 1974, up to today?

[69] A As far as I know, this order—there has been no official action taken to reverse this order. The only action that I know of being taken on it was verbal notification that there was a clerical mistake made at the State Board of Insurance and acknowledged by the entity here involved that they realized that there was a mistake made on the contract.

Q All right, sir. Mr. Pogue, you previously testified that the State Board of Insurance has regulatory authority over the business of insurance conducted within the State of Texas. Is that correct?

A Yes.

Q If it were determined by the Commissioner of Insurance that a drug service contract such as the one you have been looking at here this morning with a participating pharmacist did constitute the business of insurance, would the State Board of Insurance have regulatory authority then?

A If we deemed that the use of any type contract did constitute the business of insurance, then the State Board of Insurance would look at it from a regulatory—

MR. KAISER: Thank you. I have no further questions.

* * * *

PARTICIPATING DRUG PHARMACY AGREEMENT BETWEEN GROUP LIFE AND HEALTH INSURANCE COMPANY AND DRUG MART PHARMACY, DATED OCTOBER 12, 1974 ("EXHIBIT G" TO DEPOSITION OF ALBERT W. POGUE, DECEMBER 30, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

PARTICIPATING DRUG PHARMACY AGREEMENT

between

GROUP LIFE & HEALTH INSURANCE COMPANY

(Herein called Blue Shield)

Dallas, Texas

and

DRUG MART PHARMACY

(Herein called the Participating Pharmacy)

RETAIL PHARMACY

(Type of Organization)

12730 Nacogdoches Road, San Antonio, Texas 78217

(Address)

Pharmacy Permit No. 1352

1. The Participating Pharmacy agrees that all pharmacists dispensing drugs in its behalf are to be considered participating pharmacists. The pharmacists currently employed by the Participating Pharmacy are:

Participating Drug Pharmacy Agreement (Drug Mart)

Name	License No.
Whitnol H. Gibson	11015 Texas

2. Blue Shield agrees to provide the Participating Pharmacy with a manual which will stipulate the drugs for which benefits are available and drug deductible applicable to each person to whom drugs are to be dispensed under Section 3 of this agreement, and in which identification codes for certain of the drugs for which benefits are provided will be stipulated. Blue Shield agrees to provide the participating pharmacy with claim forms for payment in accordance with Section 3 of this participating agreement. The Participating Pharmacy agrees to complete all information required on the claim form, to retain a copy as a permanent record and to submit the original to Blue Shield.

3. The Participating Pharmacy shall dispense drugs to Subscribers who are covered under prescription drug expense contracts underwritten by Blue Shield, in accordance with the terms of such contracts as described in the Texas Blue Shield Pharmacy Manual at the time of service.

4. The Subscriber will pay to the Participating Pharmacy for each dispensed drug an amount not to exceed the required drug deductible stated in the manual for his group at the time the drug is dispensed. Except for dispensed drugs whose usual and customary charge is less than the drug deductible for the participant's

group as stated in the manual, Blue Shield agrees to pay, for each drug provided under Section 3, above, of this agreement, an amount equal to the total of the acquisition cost for such drug plus a professional dispensing fee of $2.00 less the applicable deductible. Except for dispensed drugs whose usual and customary charge is less than the drug deductible for the participant's group stated in the manual, the Participating Pharmacy agrees to accept as full payment for each drug provided under Section 3, above, of this agreement, an amount equal to the total of the acquisition cost for such drug plus the professional dispensing fee of $2.00.

Acquisition cost shall be the actual invoice cost to the Participating Pharmacy or to the company, organization or its affiliates with which the Participating Pharmacy is associated, whichever is less. Actual invoice cost shall include and reflect, with the exception of cash discounts, all trade and quantity discounts, rebates and price concessions, if any, granted by the supplier, wholesaler, or manufacturer to the Participating Pharmacy or to the company or organization with whom the Participating Pharmacy is associated.

5. The Participating Pharmacy agrees to maintain all business records suporting its acquisition cost of all drugs. The Participating Pharmacy agrees that Blue Shield shall have the right to inspect all claims forms and record of purchase necessary to establish compliance with this agreement at any time during regular business hours. The Participating Pharmacy agrees to furnish Blue Shield within fifteen (15) days, after the date of receipt of a written request from Blue Shield, with a copy of the drug purchase invoice showing the acquisition cost to the Participating Pharmacy as hereinabove computed.

6. The Participating Pharmacy shall perform all professional and other services under this agreement as an

independent contractor and shall be free to exercise its own judgment on all questions of professional practice. Blue Shield is the underwriter of the insurance protection only. The Participating Pharmacy shall not be liable for any claim, injury, demand or judgment based upon contract, tort or other grounds (including warranty or merchantability) arising out of the sale, compounding, dispensing, manufacturing or use of any prescription drug service dispensed by the Participating Pharmacy pursuant to this agreement.

7. The Participating Pharmacy agrees not to engage in any advertising relative to Blue Shield prescription drug expense contracts without prior approval of Blue Shield.

8. This agreement may be terminated at any time by either party by giving at least fifteen (15) days prior written notice to the other party.

GROUP LIFE & HEALTH
INSURANCE COMPANY

Dated at Dallas, Texas this
16 day of Oct., 1974.

By /s/ Tom L. Beauchamp, Jr.
President
DRUG MART

Dated at San Antonio, Texas this
12th day of October, 1974.

By /s/ Whitnol H. Gibson
Title: Owner

Internal Revenue Employer Identification No. 74-1496756
or
If you do not have a Tax No.,
your Social Security No. ———————

LETTER FROM STEVE G. McDONALD TO ROBERT C. McANELLY, DATED MARCH 14, 1969 ("EXHIBIT 51" TO DEPOSITION OF ALBERT W. POGUE, DECEMBER 30, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

GROUP LIFE & HEALTH
Insurance Company

[LOGO]

Blue Cross Building — Main at North Central Expressway
Dallas, Texas 75222

March 14, 1969

Mr. Robert C. McAnelly
Supervisor, AHGL Policy Unit
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701

Re: Form No. CC-OHDS-2
Form No. PDPA-1

Dear Mr. McAnelly:

We submit herewith for your approval Form No. CC-OHDS-2 which is a Drug Supplement to our Custom Coverage Group Medical-Surgical Insurance Policy, Form No. MSCC-1, which was approved by your department under Order No. 19427 on 9-27-65. We will use application Form No. MSCC-App. 1, which was approved under the same order number.

I am also enclosing Form PDPA-1 which is the Participating Drug Pharmacy Agreement that Group Life & Health Insurance Company will enter into with pharmacies for the provision of benefits under this supplement.

Letter From Steve G. McDonald to Robert C. McAnelly

I am enclosing a duplicate copy of the supplement and agreement together with this letter in order that you may stamp them and return to us.

If we can furnish additional information concerning these filings, please advise.

Sincerely yours,

GROUP LIFE & HEALTH
INSURANCE COMPANY

/s/ Steve G. McDonald
STEVE G. McDONALD

bjm
Enclosures

[Disapproved By Order No. 29701, Jun. 18, 1969,
Commissioner of Insurance, State of Texas]

[Forms subsequently exempted by Commissioner's Order No. 30413, September 30, 1969, see approved forms files for this file]

**GROUP LIFE AND HEALTH INSURANCE COMPANY
DRUG SUPPLEMENT POLICY, DATED APRIL 1, 1969
("EXHIBIT 52" TO DEPOSITION OF ALBERT W. POGUE,
DECEMBER 30, 1975)**

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

GROUP LIFE & HEALTH

Insurance Company

[LOGO]

Dallas, Texas

has issued this

DRUG SUPPLEMENT

to the

EXPERIENCE RATED GROUP MEDICAL-SURGICAL INSURANCE POLICY

No. 123456 issued heretofore or simultaneously

herewith, to

XYZ COMPANY, INC.

(therewith and herein called the Employer)

as of April 1, 1969

(herein called the supplemental policy date)

and thereby agrees to provide the additional benefits detailed herein,

all in accordance with the conditions and provisions hereof, including those set out on the following pages which are a part of this supplement as fully as if recited over the signatures hereto affixed.

This supplement becomes effective on the supplemental policy date, and is issued in consideration of the application herefor made by the Employer. It will be continued in force subject to the timely payment of premiums herefor, until terminated in accordance with the provisions of the Article captioned "Termination of Drug Coverage."

IN WITNESS WHEREOF, the Insurer has caused this supplement to be executed at its Home Office in Dallas, Texas.

President

Countersigned:

Registrar

**[Disapproved By Order No. 29701, Jun. 18, 1969,
Commissioner of Insurance, State of Texas]**

Drug Supplement Policy (April 1, 1969)

ARTICLE I—SUPPLEMENTAL DEFINITIONS

AS USED HEREIN:

A. GROUP HOSPITALIZATION CONTRACT means an instrument issued by Group Hospital Service, Inc. of Dallas, Texas to the Employer, bearing the same number as that appearing on the "Experience Rated Group Medical-Surgical Insurance Policy" described on the face page hereof, including any supplements thereto.

B. GROUP MEDICAL-SURGICAL INSURANCE POLICY means the "Experience Rated Group Medical-Surgical Insurance Policy" described on the face page hereof.

C. BASIC COVERAGE means the total amount of protection afforded a participant by both the group hospitalization contract and the group medical-surgical insurance policy on account of expense incurred for drugs and medicines.

D. COVERED DRUGS means any Prescription Legend Drug or injectable insulin:

(1) which is ordered by a physician;

(2) for which a written prescription order is customarily prepared;

(3) for which a separate charge is customarily made; and

(4) which is not entirely consumed at the time and place that the prescription order is written.

E. PRESCRIPTION LEGEND DRUG means any medicinal substance—the label of which, under the Federal Food, Drug, and Cosmetic Act, as amended, is

Drug Supplement Policy (April 1, 1969)

requi[illegible] to bear the legend: "Caution: Federal Law prohibits dispensing without prescription."

F. DRUG DEDUCTIBLE means the amount to be paid by a participant toward the cost of the initial purchase of each covered drug and toward the cost of each refill purchase of each covered drug and for each such purchase and is equal to the amount specified in Item 20 of the schedule.

G. PRESCRIPTION ORDER means a request for medication by a physician.

H. PHARMACY means a licensed establishment where Prescription Legend Drugs are dispensed by a person who is not a practitioner of the healing arts and who is licensed to dispense such drugs under the laws of the state in which he practices.

I. PROVIDER means any pharmacy, physician, or any other person or organization legally licensed to dispense drugs.

J. PARTICIPATING PROVIDER means a provider located in the State of Texas with which the Insurer or Group Hospital Service. Inc. of Dallas, Texas, has entered into a written contract for the rendition of covered drugs for which benefits are provided by this supplement, or any provider located outside the State of Texas with which any other Blue Cross or Blue Shield Plan has entered into such a contract.

K. NON-PARTICIPATING PROVIDER means a provider who is not a participating provider.

ARTICLE II—TERMS AND PROVISIONS

A. All definitions, limitations, and provisions recited in the group medical-surgical insurance policy are hereby adopted and shall be construed to apply in like manner

and with equal force to this supplement, any provisions insofar as they are in conflict with provisions herein contained, in which case the provisions of this supplement shall govern in any interpretations of rights or obligations accruing hereunder.

B. It is hereby specially declared that the non-duplication provisions set forth in Article IV, Section F, of the group medical-surgical insurance policy are applicable to this supplement except insofar as they are modified by the provisions of the following subsections:

1. Determination of drug benefits under this supplement shall be made in relation to each "claim," consisting of any combination of charges for covered drugs which are incurred within a calendar year and submitted at one time by or on behalf of a participant to the Insurer at his request for payment of drug benefits applicable thereto.

2. When the non-duplication provisions are applicable, the benefits of the other coverage and all benefits provided under the basic coverage on the items composing the claim shall be deducted from the charges for all such items, and the Insurer will pay the remainder; provided, however, that in no event shall these provisions be construed to increase the amount of total benefits which would be payable under this supplement on account of such claim in the absence of other coverage.

ARTICLE III—BENEFITS

A. Subject to the exclusions, limitations, and all other terms and provisions set forth herein, any participant shall be entitled to receive covered drugs from any participating provider as a benefit hereunder and shall be required to pay no more than the drug deductible for each of such covered drugs.

B. Any participant receiving covered drugs from a non-participating provider shall be entitled to benefits equal to 75% of the usual and customary charges for such covered drugs as determined by the Insurer, reduced by the drug deductible for such covered drugs; except that for covered drugs received from a non-participating provider located outside of the State of Texas, such participant shall be entitled to benefits equal to 100% of the usual and customary charges for such covered drugs, reduced by the drug deductible for each such covered drugs.

C. Payment of benefits by the Insurer to the provider or to the Employer, as the Insurer may elect, shall constitute full discharge of all responsibility of the Insurer to the employee on account of care rendered to any participant under his coverage.

ARTICLE IV—LIMITATIONS AND EXCLUSIONS

In addition to the limitations and exclusions stipulated in Article VI of the group medical-surgical insurance policy, it is provided that no drug benefit shall be available for any of the following:

A. Any charge for a contraceptive medication, even if such medication is a Prescription Legend Drug, and any charge for therapeutic devices or appliances (including but not by way of limitation, hypodermic needles, syringes, support garments, and other non-medicinal substances) regardless of their intended use.

B. Any charge for services other than Covered Drugs, including administration of a Prescription Legend Drug or injectable insulin.

C. The charge for more than a 34-day supply of a medication, except that Blue Cross-Blue Shield will cover 100 unit doses (e.g. tablet or capsule) of a natural thyroid product and 100 unit doses of nitroglycerine.

D. The charge for any prescription refill in excess of the number specified by the physician, or any refill dispensed after one year from the physician's order.

E. Covered Drugs for which no charge is customarily made.

F. Covered Drugs to the extent that a benefit is provided therefor under the basic coverage.

ARTICLE V—TERMINATION OF DRUG COVERAGE

A. This supplement and coverage of all participants hereunder shall automatically terminate:

1. When the group medical-surgical insurance policy is terminated for any reason;
2. Upon default in payment of supplemental premiums, subject to the grace period and reinstatement provided for in the group medical-surgical insurance policy;
3. Upon cancellation of this supplement in any manner as specified in the group medical-surgical insurance policy for cancellation thereof.

B. The coverage of any participant under this supplement shall automatically terminate when his coverage under the group medical-surgical insurance policy is terminated, subject, however, to refund of supplemental premiums paid in advance, as therein provided.

C. Under no circumstances shall the Plan be obligated to notify any participant of the termination of this supplement or of his coverage hereunder.

D. No conversion privilege afforded a participant under the group medical-surgical insurance policy shall be deemed to apply to this supplement.

ARTICLE VI—GENERAL PROVISIONS

A. DISCLOSURE AUTHORIZATION. In consideration of the Insurer's having waived physical examination in connection with the application herefor, the employee on behalf of himself and his covered dependents and sponsored dependents shall be deemed to have authorized any provider to make available to the Insurer information relating to all prescription orders, copies thereof and other records as needed by the Insurer.

B. The Insurer shall not be liable for any claim or demand for injuries or damage arising out of or in connection with the manufacturing, compounding, dispensing or use of any Prescription Legend Drugs or insulin, whether or not covered under this supplement.

C. The Insurer reserves the right to deny benefits for any drug prescribed or dispensed in a manner contrary to normal medical or pharmaceutical practice.

Drug Supplement Policy (April 1, 1969)

PARTICIPATING DRUG PHARMACY AGREEMENT

between

GROUP LIFE & HEALTH INSURANCE COMPANY

(Herein called Blue Shield)

Dallas, Texas

and

_____

(Herein called the Participating Pharmacy)

_____

(Type of Organization)

_____

(Address)

Pharmacy Permit No. _____

1. The Participating Pharmacy agrees that all pharmacists dispensing drugs in its behalf are to be considered participating pharmacists. The pharmacists currently employed by the Participating Pharmacy are:

Name	License No.
_____	_____
_____	_____
_____	_____

Drug Supplement Policy (April 1, 1969)

2. The Participating Pharmacy shall dispense drugs for which benefits are provided under Blue Shield's Drug Supplement CC-OHDS-2 or any other supplement or contract upon written notice by Blue Shield, to persons who are entitled to benefits under such supplements, all in accordance with the terms of such instruments.

3. The Participating Pharmacy agrees to accept as full payment for each drug provided under Section 2, above, of this agreement an amount equal to the total of the acquisition cost for such drug and a professional dispensing fee of $_____. Acquisition cost, as used in this agreement, means the actual cost of a drug to the Participating Pharmacy, as determined under rules and regulations published by Blue Shield.

4. Blue Shield agrees to pay to the Participating Pharmacy for each drug dispensed under Section 2 of this agreement an amount equal to the excess, if any, of the amount stipulated in Section 3, above, of this agreement over the drug deductible amount, if any, stipulated in the instrument under which drug benefits are available, and the Participating Pharmacy agrees that its charge for such drug to any other person shall not exceed such drug deductible.

5. Blue Shield agrees to provide the Participating Pharmacy with a manual which will stipulate the drugs for which benefits are available and drug deductible applicable to each person to whom drugs are to be dispensed under Section 2 of this agreement, and in which identification codes for certain of the drugs for which benefits are provided will be stipulated. The Participating Pharmacy agrees to include on those claims for benefits the code for the drug for which claim is made if such code is shown in the Participating Pharmacy's current manual.

Drug Supplement Policy (April 1, 1969)

6. All contracts or transactions in which the Participating Pharmacy engages involving dispensing of drugs shall be between the Participating Pharmacy and the patient and Blue Shield shall not be a party thereto.

7. The Participating Pharmacy agrees that Blue Shield shall have the right to inspect all records pertaining to persons eligible for benefits under its drug supplements at any time during regular business hours.

8. The Participating Pharmacy agrees not to engage in any advertising relative to Blue Shield drug supplements without prior approval of Blue Shield.

9. This agreement may be terminated at any time by either party by giving at least 15 days prior written notice to the other party.

GROUP LIFE & HEALTH
INSURANCE COMPANY

Dated at Dallas, Texas
this — day of ———,
19 ——.

By _____
President

_____

Dated at ———, Texas
this — day of ———,
19 ——.

By _____
Title:

OFFICIAL ORDER NO. 29701 OF TEXAS COMMISSIONER OF INSURANCE, DATED JUNE 18, 1969 ("EXHIBIT 53" TO DEPOSITION OF ALBERT W. POGUE, DECEMBER 30, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

No. 29701

OFFICIAL ORDER

of the

COMMISSIONER OF INSURANCE

of the

STATE OF TEXAS
AUSTIN, TEXAS

Date June 18, 1969

Subject Considered:

APPROVAL OF FORMS

General remarks and official action taken:

On this date came on for consideration by the Commissioner of Insurance application for approval of Form No. CC-OHDS-2 filed by Group Life & Health Insurance Company and the Commissioner, having found that said form does not comply with the requirements of Article 3.42, Texas Insurance Code, as amended, hereby disapproves said form under authority of the cited statute, and herenow states his grounds for such disapproval as follows:

Under provision of said form the differentiation of benefits as between "participating provider" dispensed drugs and "non-participating provider" dispensed drugs constitutes unfair discrimination within the meaning of Article 21.21, Texas Insurance Code.

Official Order No. 29701, June 18, 1969

The provisions of said form are violative of the anti-trust and monopoly statutes of this state.

Prepared, recommended and approved by:

/s/ R. C. McAnelly
R. C. McANELLY,
Supervisor
Health and Group Life
Policy Unit
Life Division

COMMISSIONER OF INSURANCE

By /s/ Don B. Odum
DON B. ODUM,
Section Manager
Life Division

[Revised by Order 30413 A & H 9/30/69]

LETTER FROM PAUL D. CONNOR TO HON. CRAWFORD MARTIN, DATED AUGUST 21, 1969 ("EXHIBIT 54" TO DEPOSITION OF ALBERT W. POGUE, DECEMBER 30, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

Ned Price
Member

George M. Cowden
Chairman

Durwood Manford
Member

Clay Cotten
Commissioner of Insurance

[SEAL]

STATE BOARD OF INSURANCE
1110 San Jacinto
AUSTIN, TEXAS 78701

August 21, 1969

Honorable Crawford Martin
Attorney General of Texas
Capitol Station
Austin, Texas 78711

Re: Medi-MET Prescription Drug Plan—
General Motors Corporation

Dear Sir:

A domestic stock life insurance company by the name of Group Life and Health Insurance Company, Dallas, Texas, recently submitted its policy Form CC-OHDS-2 for our approval. A copy of this form is enclosed. It was disapproved by Commissioner's Order No. 29701, dated June 18, 1969, and a copy of that Order is also enclosed. You will note that the primary basis for disapproval was that the form's use would result in a violation of the anti-trust and monopoly statutes of Texas.

Group Life and Health Insurance Company did not appeal from the Commissioner's disapproval, and therefore this particular case is moot. However, this insured did call our attention to the fact that Metropolitan Life

Letter from Paul D. Connor to Hon. Crawford Martin

Insurance Company, a New York insurer licensed in Texas, does have an equivalent plan in effect in this state. Since Metropolitan is a foreign corporation and since the master contract was issued outside of Texas, there was no requirement that the policy be filed with the Commissioner of Insurance of Texas. For this reason, we were unable to raise the anti-trust and monopoly questions by disapproval of a policy form as we have done in the Group Life and Health case.

In any event, we did notify Metropolitan Life Insurance Company that a plan equivalent to theirs had been disapproved when submitted by Group Life and Health Insurance Company. At the request of Metropolitan Life Insurance Company and its attorneys, Vinson, Elkins, Searls & Connally, a conference was held in our offices on August 13, 1969. Assistant Attorney General Joe A. Longley was present at this conference as a result of our telephone invitation to your Anti-Trust Division.

The officers and attorneys from Metropolitan Life were completely cooperative in disclosing their plan of operation to us. They also presented certain documents for the purpose of fully outlining the factual operations under their contract with General Motors Corporation. The documents which they submitted are enclosed herewith.

As we have previously stated, no appeal was taken by Group Life and Health Insurance Company, and therefore no question of anti-trust violation is pending before the State Board of Insurance. Since Metropolitan Life is not required to file the form of policy which it issues in a foreign state (even though some of the covered employees are residents of Texas), Metropolitan's contracts with General Motors and with the various druggists of Texas are not before the State Board of Insurance for consideration. If the activities of Metropolitan Life are

Letter from Paul D. Connor to Hon. Crawford Martin

in violation of the Texas anti-trust act, they would nevertheless appear to be beyond the jurisdiction of the State Board of Insurance. For that reason, this letter and the attached documents are being submitted to you for information only.

Very truly yours,

Commissioner of Insurance

By

Paul D. Connor
Assistant to the Commissioner

PDC:lce
Encls.

OFFICIAL ORDER NO. 30413 OF TEXAS COMMISSIONER OF INSURANCE, DATED SEPTEMBER 30, 1969 ("EXHIBIT 55" TO DEPOSITION OF ALBERT W. POGUE, DECEMBER 30, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

No. 30413

OFFICIAL ORDER

of the

COMMISSIONER OF INSURANCE

of the

STATE OF TEXAS
AUSTIN, TEXAS

Date Sep. 30, 1969

Subject Considered: POLICY FORM APPROVAL—

EXEMPTION FROM THE REQUIREMENTS OF ARTICLE 3.42, TEXAS INSURANCE CODE

General remarks and official action taken:

Pursuant to the authority granted by Article 3.42, Paragraph (e) of the Texas Insurance Code, the Commissioner of Insurance hereby exempts from the requirements of said Article Policy Form CC-OHDS-2 submitted by Group Life and Health Insurance Company, Dallas, Texas; and this exemption shall remain effective pending further orders from the Commissioner of Insurance. To the extent that this exemption order conflicts with Commissioner's Order No. 29701, dated June 18, 1969, Order No. 29701 is superseded.

This exemption order shall also apply to any form, identical in content to Form CC-OHDS-2, delivered, issued or used in this state by any licensed insurer.

This exemption order is issued and published for the reason that, in the opinion of the Commissioner, Article 3.42 of the Texas Insurance Code may not practicably be applied at this time to the forms covered by the exemption. The exempt forms are described as drug service contracts, which confer upon the policyholder the right to obtain certain prescribed drugs at a cost fixed in the contract, the insurer having entered into participating agreements with dispensing pharmacies to supply the prescribed drugs to its policyholders.

The policy forms herein exempt, used in connection with the participating agreements with pharmacies as described above, have raised questions under the Texas anti-trust and anti-monopoly laws, and such questions have been referred to the Attorney General of the State of Texas. Pending such time as these questions are resolved, the exemptions authorized by this Order are granted for the purpose of preventing any competitive advantages which foreign insurance companies, issuing policies outside of Texas but including Texas residents under their coverage, might have over domestic companies seeking to issue equivalent policy contracts.

/s/ Clay Cotten
CLAY COTTEN
Commissioner of Insurance

Prepared by:

/s/ Paul D. Connor
PAUL D. CONNOR
Assistant to the Commissioner

LETTER FROM PAUL D. CONNOR TO HON. CRAWFORD MARTIN, DATED OCTOBER 1, 1969 ("EXHIBIT 56" TO DEPOSITION OF ALBERT W. POGUE, DECEMBER 30, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

October 1, 1969

Honorable Crawford Martin
Attorney General of Texas
Capitol Station
Austin, Texas 78711

Attention: Mr. Robert Owen

Re: Medi-MET Prescription Drug Plan—
General Motors Corporation

Dear Sir:

This will supplement our letter of August 21 on the above subject, and our telephone conversation of several days ago. After discussing this case with the Commissioner, it was determined that an exemption order should be issued to prevent an unfair competitive advantage which foreign insurance companies might have in the absence of the exemption order. It is, of course, intended that the order will remain in effect only long enough to permit us to resolve any questions of anti-trust law violations.

It is our understanding from Mr. Philip Overton, a local attorney at law who represents Group Life and Health Insurance Company, that the auto manufacturers had put a very short deadline on bids for this coverage. We understand that this deadline was dictated by agreements made between the auto manufacturers and the United Auto Workers of America. It was decided that

the exemption order would relieve the urgency of resolving the anti-trust questions, giving us time to brief the law with deliberation.

We are making no opinion request at this time, since we do not believe that an Attorney General's Opinion would serve any immediate administrative purpose for the State Board of Insurance. In due time, of course, we would like to be advised of any decision or action taken by the Attorney General in the premises, so that we can withdraw our exemption order or take such other action as we deem appropriate.

Very truly yours,

Commissioner of Insurance

By

Paul D. Connor
Assistant to the Commissioner

PDC:lce
Encl.—Copy of Commissioner's Order No. 30413

CC: Mr. Don B. Odum
Mr. Robert C. McAnelly

LETTER FROM STEVE G. McDONALD TO A. W. POGUE, DATED SEPTEMBER 23, 1974 ("EXHIBIT 57" TO DEPOSITION OF ALBERT W. POGUE, DECEMBER 30, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

Tom L. Beauchamp, Jr., President

GROUP LIFE & HEALTH
Insurance Company

[LOGO]

Main at North Central Expressway
P. O. Box 5403—Dallas, Texas 75222

September 23, 1974

Mr. A. W. Pogue, Manager
Headquarters Section, Life Division
State Board of Insurance
1110 San Jacinto
Austin, Texas 78786

Re: MF-1, Experience Rated Group Hospitalization and Medical-Surgical Contract
MF-1-DS-1, Drug Supplement
MF-1-APP-1, Group Application Blank
MF-1-OA-1, Operating Agreement
MF-1-IA-1, Insurance Agreement

Dear Mr. Pogue:

We submit herewith for your approval the above described new contract forms.

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

Letter from Steve G. McDonald to A. W. Pogue

We anticipate entering into a health care program agreement with the Bexar County Medical Foundation wherein Blue Shield of Texas will provide benefits as set forth in Form Nos. MF-1, Article VII, and MF-1-DS-1 to groups desiring this coverage. The Bexar County Medical Foundation will provide medical-surgical benefits as set forth in a separate contract, a copy of which will be sent to you in a few days for information purposes only.

We are also submitting for your approval the operating and reinsurance agreements between Blue Cross and Blue Shield of Texas and the Bexar County Medical Foundation. The attached list indicates our internal stock control numbers used for these various forms.

Within the next few weeks we will submit the certificate-booklet and enrollment application card for your approval.

We are submitting two copies of each form described above, together with an extra copy of this letter. Will you please stamp the extra copy of each "approved" and return to us for our files. These same forms are being concurrently filed by Group Hospital Service, Inc.

If additional information is needed regarding this filing, please call me in order that we may discuss the matter more in detail by telephone.

Yours very truly,

Group Life & Health
Insurance Co.

/s/ Steve G. McDonald
STEVE G. McDONALD

SGMcD:jc

Encs.
cc: Mr. Joe Hawkins, Mr. John Holden

Letter from Steve G. McDonald to A. W. Pogue

MF-1, Experience Rated Group Hospitalization and Medical-Surgical Contract (between Blue Cross and Blue Shield and the Group)

1600-974	Face Page	
1601-974	Article I	
1602-974	Article I	(Page 2)
1603-974	Article I	(Page 3)
1604-974	Article I	(Page 4)
1605-974	Article II	
1606-974	Article II	(Page 2)
1607-974	Article II	(Page 3)
1608-974	Article III	
1609-974	Article IV	
1610-974	Article IV	(Page 2)
1611-974	Article V	
1612-974	Article V	(Page 2)
1613-974	Article V	(Page 3)
1618-974	Article VII	
1619-974	Article VII	(Page 2)
1620-974	Article VII	(Page 3)
1621-974	Article VIII	
1622-974	Article VIII	(Page 2)
1623-974	Article IX	
1624-974	Article IX	(Page 2)
1625-974	Article X	
1626-974	Article XI	
1627-974	Article XI	(Page 2)
1628-974	Article XI	(Page 3)

MF-1-DS-1, Drug Supplement

1629-974	Face Page
1630-974	Article I
1631-974	Article II
1632-974	Article III
1633-974	Article IV
1634-974	Article V
1635-974	Article VI

MF-1-APP-1, Group Application Blank

1636-974	Page 1
1637-974	Page 2

GROUP LIFE AND HEALTH INSURANCE COMPANY DRUG SUPPLEMENT POLICY, DATED OCTOBER 1, 1974 ("EXHIBIT 59" TO DEPOSITION OF ALBERT W. POGUE, DECEMBER 30, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

[LOGO]

GROUP LIFE & HEALTH INSURANCE CO.
(Herein called Blue Shield of Texas)

Dallas, Texas

has issued this

DRUG SUPPLEMENT

to the

EXPERIENCE RATED GROUP HOSPITALIZATION AND MEDICAL-SURGICAL CONTRACT

No. 34567

issued heretofore or simultaneously herewith, to

ABC COMPANY
(therewith and herein called the Employer)

as of October 1, 1974
(herein called the supplemental contract date)

and thereby agrees to provide
the additional benefits detailed herein,

[Approved By Order No. 45511, Oct. 1, 1974,
Commissioner of Insurance, State of Texas]

all in accordance with the conditions and provisions hereof, including those set out on the following pages which are a part of this supplement as fully as if recited over the signatures hereto affixed.

This supplement becomes effective on the supplemental contract date, and is issued in consideration of the application herefor made by the Employer. It will be continued in force subject to the timely payment of premiums herefor, until terminated in accordance with the provisions of the Article captioned "Termination of Drug Coverage."

IN WITNESS WHEREOF, Blue Shield of Texas has caused this supplement to be executed at its Home Office in Dallas, Texas.

/s/ Thomas Beauchamp, Jr.
President

/s/ Boone Powell
Secretary

Countersigned:

Registrar

ARTICLE I—SUPPLEMENTAL DEFINITIONS

AS USED HEREIN:

A. BASIC CONTRACT means the "Experience Rated Group Hospitalization and Medical-Surgical Contract" described on the face page hereof.

B. BASIC COVERAGE means the total amount of protection afforded a participant by the basic contract on account of expense incurred for drugs and medicines.

C. COVERED DRUGS means any Prescription Legend Drug or injectable insulin:

(1) which is ordered by a physician;

(2) for which a written prescription order is customarily prepared;

(3) for which a separate charge is customarily made;

(4) which is not entirely consumed at the time and place that the prescription order is written; and

(5) which is received by the participant while covered hereunder.

D. PRESCRIPTION LEGEND DRUG means any medicinal substance—the label of which, under the Federal Food, Drug, and Cosmetic Act, as amended, is required to bear the legend: "Caution: Federal Law prohibits dispensing without prescription."

E. DRUG DEDUCTIBLE means the amount to be paid by a participant toward the cost of the initial purchase of each covered drug and toward the cost of each refill purchase of each covered drug and for each such purchase and is equal to two dollars ($2.00).

F. PRESCRIPTION ORDER means a request for medication by a physician.

G. PHARMACY means a licensed establishment where Prescription Legend Drugs are dispensed by a person who is not a practitioner of the healing arts and who is licensed to dispense such drugs under the laws of the state in which he practices.

H. PROVIDER means any pharmacy, physician, or any other person or organization legally licensed to dispense drugs.

I. PARTICIPATING PROVIDER means a provider located in the State of Texas with which Blue Shield of Texas or Group Hospital Service, Inc. of Dallas, Texas, has entered into a written contract for the rendition of covered drugs for which benefits are provided by this supplement, or any provider located outside the State of Texas with which any other Blue Cross or Blue Shield Plan has entered into such a contract.

J. NON-PARTICIPATING PROVIDER means a provider who is not a participating provider.

ARTICLE II—TERMS AND PROVISIONS

A. All definitions, limitations, and provisions recited in the basic contract are hereby adopted and shall be construed to apply in like manner and with equal force to this supplement and any other provisions insofar as they are in conflict with provisions herein contained, in which case the provisions of this supplement shall govern in any interpretation of rights or obligations accruing hereunder.

B. It is hereby specially declared that the non-duplication provisions set forth in Article V, Section E, of the basic contract are applicable to this supplement except insofar as they are modified by the provisions of the following subsections:

1. Determination of drug benefits under this supplement shall be made in relation to each "claim," consisting of any combination of charges for covered drugs which are incurred within a calendar year and submitted at one time by or on behalf of a participant to Blue Shield of Texas at his request for payment of drug benefits applicable hereto.

2. When the non-duplication provisions are applicable, the benefits of the other coverage and all benefits provided under the basic coverage on the items composing the claim shall be deducted from the charges for all such items, and Blue Shield of Texas will pay the remainder; provided, however, that in no event shall these provisions be construed to increase the amount of total benefits which would be payable under this supplement on account of such claim in the absence of other coverage.

ARTICLE III—BENEFITS

A. Subject to the exclusions, limitations, and all other terms and provisions set forth herein, any participant shall be entitled to receive covered drugs from any participating provider as a benefit hereunder and shall be required to pay no more than the drug deductible for each of such covered drugs.

B. Any participant receiving covered drugs from a non-participating provider shall be entitled to benefits equal to 75% of the result of the reasonable charge for such covered drugs as determined by Blue Shield of Texas, reduced by the drug deductible for such covered drugs; except that for covered drugs received from a non-participating provider located outside of

the State of Texas, such participant shall be entitled to benefits equal to 100% of the reasonable charge for such covered drugs, reduced by the drug deductible for each such covered drugs.

C. Payment of benefits by Blue Shield of Texas to the provider or to the employee, as Blue Shield of Texas may elect, shall constitute full discharge of all responsibility of Blue Shield of Texas to the employee on account of care rendered to any participant under his coverage.

ARTICLE IV—LIMITATIONS AND EXCLUSIONS

In addition to the limitations and exclusions stipulated in Article VIII of the basic contract, it is provided that no drug benefit shall be available for any of the following:

A. Any charge for a contraceptive medication, even if such medication is a Prescription Legend Drug, and any charge for therapeutic devices or appliances (including but not by way of limitation, hypodermic needles, syringes, support garments, and other non-medicinal substances) regardless of their intended use;

B. Any charge for services other than Covered Drugs, including administration of a Prescription Legend Drug or injectable insulin;

C. The charge for more than a 34-day supply of a medication, except that Blue Shield of Texas will cover 100 unit doses (e.g. tablet or capsule) of a natural thyroid product and 100 unit doses of nitroglycerine;

D. The charge for any prescription refill in excess of the number specified by the physician, or any refill dispensed after one year from the physician's order;

E. Covered Drugs for which no charge is customarily made;

F. Covered Drugs to the extent that a benefit is provided therefor under the basic coverage;

G. Covered Drugs which are not medically necessary.

ARTICLE V—TERMINATION OF DRUG COVERAGE

A. This supplement and coverage of all participants hereunder shall automatically terminate:

1. When the basic contract is terminated for any reason;

2. Upon default in payment of supplemental premiums, subject to the grace period and reinstatement provided for in the basic contract;

3. Upon cancellation of this supplement in any manner as specified in the basic contract for cancellation thereof.

B. The coverage of any participant under this supplement shall automatically terminate when his coverage under the basic contract is terminated, subject, however, to refund of supplemental premiums paid in advance, as therein provided.

C. Under no circumstances shall Blue Shield of Texas be obligated to notify any participant of the termination of this supplement or of his coverage hereunder.

D. No conversion privilege afforded a participant under the basic contract shall be deemed to apply to this supplement.

ARTICLE VI—GENERAL PROVISIONS

A. DISCLOSURE AUTHORIZATION. In consideration of Blue Shield of Texas having waived a physical

Drug Supplement Policy (October 1, 1974)

examination in connection with the application herefor, the employee on behalf of himself and his covered dependents shall be deemed to have authorized any provider to make available to Blue Shield of Texas information relating to all prescription orders, copies thereof and other records as needed by Blue Shield of Texas.

B. Blue Shield of Texas shall not be liable for any claim or demand for injuries or damage arising out of or in connection with the manufacturing, compounding, dispensing or use of any Prescription Legend Drug or insulin, whether or not covered under this supplement.

C. Blue Shield of Texas reserves the right to deny benefits for any drug prescribed or dispensed in a manner contrary to normal medical or pharmaceutical practice.

OFFICIAL ORDER NO. 45511 OF TEXAS COMMISSIONER OF INSURANCE, DATED OCTOBER 1, 1974 ("EXHIBIT 61" TO DEPOSITION OF ALBERT W. POGUE, DECEMBER 30, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

No. 45511

OFFICIAL ORDER

of the

COMMISSIONER OF INSURANCE

of the

STATE OF TEXAS
AUSTIN, TEXAS

Date Oct. 1, 1974

Subject Considered:

General remarks and official action taken:

On this date came on for consideration by the Commissioner of Insurance applications for approval of the forms described herein; and the Commissioner, having found that each of said forms complies with the requirements of Article 3.42, Texas Insurance Code, as amended, hereby approves each of said forms under authority of the cited statute:

Official Order No. 45511, October 1, 1974

Submitted By:	*Identifying Form Nos.:*
Group Hospital Service, Inc. Group Life & Health Insurance Company	MF-1 with; MF-1-APP-1 attached; MF-1-DS-1.

This approval is extended for use as the insurer portion of a Group Comprehensive Medical Care Plan and such approval is limited and does not constitute approval of the said form for any other use under the Texas Insurance Code.

/s/ Don B. Odum
DON B. ODUM
Commissioner of Insurance

Prepared, recommended and approved by:

/s/ Mildred R. Kurt
(Mrs.) MILDRED R. KURT, Supervisor
Health and Group Life Policy Unit
Life Division

EXCERPTS FROM DEPOSITION OF PAUL D. CONNOR, DECEMBER 30, 1975

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

---

* * * *

[3] DIRECT EXAMINATION

Questions by Mr. Kaiser:

Q Would you state your full name, please?
A My name is Paul D. Connor.
Q Mr. Connor, what is your address?
A I live at 2612 Wooldridge Drive, Austin, Texas.
Q What is your business address, Mr. Connor.
A 505 West 12th Street, Austin.
Q Mr. Connor, were you served with a subpoena requesting your appearance here today?
A Yes, sir, I was.
Q Mr. Connor, what is your occupation?
A I am a lawyer.
Q When were you licensed to practice, sir?
A 1949.
[4] Q What firm do you practice with, Mr. Connor?
A Flahive and Ogden.
Q Mr. Connor, just for your benefit, let me introduce the counsel that are here at the table. My name is Keith Kaiser, and I represent Group Life and Health Insurance Company, and throughout this deposition this afternoon I will refer to it as Blue Shield of Texas or just simply Blue Shield. To my immediate left is Larry Macon of our firm who is my co-counsel in this case. To your right, immediate right is Mr. Bill Church who represents Walgreens Drug Stores. To Mr. Church's right is Charles Shaddox who represents Reiger-Medi-Save, and at the far end of the table is Mr. Joel Pullen who represents the Plaintiffs in this lawsuit. There is one other De-

Excerpts from Deposition of Paul D. Connor

fendant involved in the suit and that is Sommers Drug Stores, and counsel for Sommers is not here today.

A Thank you, sir.

Q This particular suit pertains to an anti trust action that has been filed by Mr. Pullen on behalf of his clients. His clients are 17 or 18 independent pharmacists in San Antonio, and this is an anti trust action which arises out of the operation or certain operations of Blue Shield, and in particular, the issuance of a pre-paid prescription drug supplement and third party contracts or drug service contracts with participating pharmacists. [5] Mr. Connor, I think it would be kind of ludicrous for me to give you the standard preliminary instructions that I give a witness when I take a deposition, so we will just pass by those because I am sure you have been involved in hundreds of depositions during your legal career. Can you tell me where you graduated from law school, sir?

A Yes. At the University of Texas.

Q What did you do—it is my understanding that you graduated in 1949.

A '49.

Q Where did you go to work then, sir?

A I was immediately employed by the State Board of Insurance which was called the Board of Insurance Commissioners at that time, and I continued in the employ of that agency until three years ago, about.

Q In what capacity were you employed when you first went to work for the State Board?

A Initially I was counsel, legal counsel for the Board of Insurance, and that covered a period of about ten years. The remaining part of my tenure was Deputy Commissioner or Assistant Commissioner of Insurance.

Q Would you tell me when you became Deputy Commissioner or Assistant Commissioner of Insurance, the year as best you can recall?

Excerpts from Deposition of Paul D. Connor

[6] A Possibly 1957. That would be a little difficult; 8 years, ten years, or something like that.

Q Can you tell me which title, Deputy Commissioner or Assistant Commissioner, because we may be referring to that?

A I actually—I don't know. There were several different titles given over a period of time, so Deputy Commissioner is about as accurate as any.

Q All right. As Deputy Commissioner of the State Board of Insurance can you tell me what your duties encompassed?

A I was the first Assistant to the Commissioner and therefore replaced the Commissioner in his absence. I was the first Administrative Assistant to the Commissioner, therefore my duties were somewhat the same as the Commissioner's duties.

Q In the absence of the Commissioner did you have decision making authority?

A Yes, I did.

Q In the absence of the Commissioner did you have all of the decision making authority that the Commissioner would have if he were present?

A In practice I did exercise the authority which he would have had he been present. His absences were generally a very short duration, therefore I did not see fit to take over unless there was some urgency, and I would [7] await his return.

Q Mr. Connor, am I correct in saying that you were Deputy Commissioner from 19—pardon me, from 1957 until such time as you left the Board in what year?

A In 1972.

Q Mr. Connor, I think maybe we can expedite matters just a little bit if I showed you some documents that have previously been marked in deposition proceedings here today and which have been identified as being from the official records of the State Board of Insurance, in par-

ticular, the policy approval division. I hand you what has been marked as Deposition Exhibit 52. I will just keep on going, so I will hand you Deposition Exhibits 53, 54, 55 and 56, inclusive.

A I have reviewed those Exhibits briefly.

Q Mr. Connor, it is my understanding from previous testimony that in the latter part of 1969, say somewhere around—pardon me—mid 1969, a particular drug supplement was submitted by Blue Shield to the State Board of Insurance for approval. I will hand you what has been marked as Deposition Exhibit 52 and mention to you that Mr. McAnelly has previously testified and said that the policy was submitted to him and he reviewed it prior to the Board taking any official action on it. Now, Mr. McAnelly has testified that at the time he [8] reviewed the policy he had various conversations with you, or he brought the policy to your attention. Do you recall this particular policy, sir?

A I have no real recollection of this policy. I have a vague recollection of having discussed this type of policy with Mr. McAnelly at that time.

Q Would it have been in the regular course of business for the—for someone in the Approval Division to come to you to discuss problems over policy approval?

A Yes, sir.

Q Mr. Connor, I hand you what has been marked as Deposition Exhibit 53 which is an official order of the Insurance Commissioner disapproving the policy that I have just previously handed you which should have been Exhibit 52. Do you recall discussing that disapproval order with Mr. McAnelly before it was issued?

A This has been six years ago, and by having recently reviewed this whole file, I have a very vague memory of the disapproval and the events which followed it, more particularly, an isolated thing. I do not recall discussing the entry of the disapproval order.

Q Do you recall discussing with Mr. McAnelly the objections set out in the disapproval order which refer to Article 21.21 of the Insurance Code?

A I do not. I remember that the—I do not remember the [9] basis of the order independently of reading the order now in front of me.

Q All right, sir. Mr. Connor, I am going to hand you what has previously been marked as Deposition Exhibit 54, and I would ask you, sir, if you can identify that document.

A Yes, sir, I can.

Q Would you identify it for the record, please?

A This is a letter dated August 21, 1969, addressed to Honorable Crawford Martin, Attorney General of Texas, and written by me.

Q All right, sir. Does this letter which I handed you which is Deposition Exhibit 54, refresh your recollection with respect to any of the problems that were encountered with the policy which was later disapproved?

A Well, there is no refreshing of recollection on my memory of the entry of the order or the form itself, but I do recall having written the letter and the reason for having written the letter. To that extent my memory is refreshed, yes.

Q Mr. Connor, going back to the disapproval order which has been marked Deposition Exhibit 53, do you have any recollection of providing any input to Mr. McAnelly relating to the possible violation by the policy of the antitrust and antimonopoly statutes of the State of Texas?

A I don't recall it.

[10] Q Mr. Connor, I am going to hand you what has been marked as Deposition Exhibit 55 which has been previously identified as an official order of the Commissioner of Insurance dated September 30, 1969. I will ask you to read that, sir.

Excerpts from Deposition of Paul D. Connor

A All right, sir. Do you want me to read it in its entirety?

Q No. Just read it to yourself, please.

A Oh, I see.

Q Just to refresh yourself.

A I have completed the reading of it.

Q All right, sir. Mr. Connor, do you recall any background to the issuance of that exemption—

MR. KAISER: Strike that question, please.

Q Let me ask you, sir, do you recognize your signature in the lower right-hand corner—lower left-hand corner?

A Yes, sir, it is my signature.

Q Do you recognize the signature of Mr. Clay Cotten who was at that time Commissioner of Insurance?

A Yes, sir, I do. It is his signature.

Q Now, it is my understanding, sir, from this document that you prepared it. Do you recall any of the background information as to why the exemption order was granted?

A Yes, sir. I think part of the background information is contained in the letter of August 21 which is Exhibit [11] 54, Deposition Exhibit 54. I do recall part of the background which went into the publication of this order.

Q What was the background, sir?

A There had been a drug service contract which is your Exhibit 52 had been submitted and disapproved by Exhibit 53, then there was brought to our attention somehow the fact that the contract had been negotiated by some labor union with some—I believe it was United Auto Workers, and it was a part of the fringe benefits which they had negotiated for and that a contract of this kind, the same kind which had been disapproved, for a domestic company was in fact being written by Metropolitan Life Insurance Company, so we had some conferences as Exhibit 54 indicates, and concluded that the proper course would be to exempt the order—I mean exempt the policy form from the requirements of approval, leaving the domestic company which sought to write this coverage, to fulfill the labor union's negotiated agreement with its automobile workers.

Excerpts from Deposition of Paul D. Connor

Q All right, sir. Mr. Connor, is the authority to exempt or not exempt granted by statute, sir?

A Yes, sir. It is found in Article 3.42 of the Insurance Code.

Q Is that a discretionary provision? At least, does that [12] confer discretion upon the Insurance Commissioner in granting an exemption?

A Yes, I think so. The statute I haven't looked at in preparation for this, but it uses some words, as I recall, which indicate that he may exempt when in his discretion he feels it is proper or that the public interests are served or something like that. I would have to open the book to see.

Q All right, sir. To the best of your recollection, in matters pertaining to exemptions, did the Commissioner of Insurance have brought [*sic;* broad] regulatory powers, broad discretionary powers?

A Yes, I think he did.

Q Mr. Connor, I will ask you if you would, sir, to go back and reread the third paragraph in the Exemption Order, please, sir.

A I have read it.

Q All right, sir. Now, I would like to bring another document to your attention which is a portion of Deposition Exhibit 52, the last two pages, if you will, please sir. Prior to drafting the Exemption Order, Mr. Connor, did you—do you recall that you had occasion to review the document which consists of two pages and is attached to Deposition Exhibit 52 and is captioned Participating Drug Pharmacy Agreement?

Excerpts from Deposition of Paul D. Connor

[13] A I do not.

Q You do not recall?

A No.

Q From your reading of the third paragraph in the Exemption Order would it appear to you that you at that time reviewed the document?

A I probably reviewed it or—I probably reviewed the document itself and very likely conferred with Mr. McAnelly or probably Mr. McAnelly in addition to reviewing it, but I have no recollection of reading the document.

Q All right, sir. Mr. Connor, at the time of the issuance of this Exemption Order that you are looking at right now, was it you opinion that this particular contract which is marked Deposition Exhibit 52, along with the Participating Drug Pharmacy Agreement which Blue Shield proposed to issue, was it your opinion that that constituted the business of insurance?

A Yes.

Q Which is subject to regulation by the State Board of Insurance?

A Yes.

Q Now, Mr. Connor, the exemption, as I see it—and, of course, the document speaks for itself, but the exemption was granted pursuant to certain authority contained in Article 3.42 of the Insurance Code. Can you tell me if [14] exempt policies, after the exemption is granted are treated any differently than approved policies?

A I don't believe that there would be any difference. The policy form, of course, is just a contract, and a company with an exemption or with an approval in any case would be authorized to issue that contract.

Q All right, sir. Are policies which have been exempted by the State Board of Insurance subject to the same regulation, control and supervision by the State Board of Insurance as are approved policies?

Excerpts from Deposition of Paul D. Connor

A Yes, I would say exactly the same, or perhaps the degree of regulation may be a little greater with the exempt policy in that the exemption—I believe I am correct in this—can be withdrawn with lesser requirements than would be incumbent upon the department if it sought to disapprove a contract once approved.

Q Mr. Connor, in the fourth paragraph of the Exemption Order it states that the policy forms herein exempt used in connection with the participating agreements with pharmacies as described above have raised questions under the Texas Antitrust and Antimonopoly laws. It continues on there, but that is the pertinent portion I would like to talk about. Were those questions that had been raised—if you recall, sir, were the questions that have been raised strong questions of—under the Antitrust and [15] Antimonopoly Laws, or were they weak in your mind, or do you recall?

A I don't have any recollection whether strong or weak except that the disapproval of the form which is shown by Exhibit 53 would indicate that at that time they were thought to be strong enough to disapprove the form. The exemption order entered later would indicate that they were not thought to be so strong as to prohibit as a kind of a—almost as an injunction matter prohibit the issuance of the contract in the first place, but be weak enough objections to permit the company to go ahead as Metropolitan apparently was already going ahead and to suffer the consequences of violation if there be any. It was almost as if we had a Motion in Limine to stop the doing of what they were proposing to do. We could have stopped it through the medium of refusing to approve and refusing to exempt the contract on which activity was being pursued, but as these Exhibits indicate, the departmental action was to refer the matter to the Attorney General and not to block the doing of what was being done through the device of refusing to allow a form to be used. I am sorry for the length of the answer but

Excerpts from Deposition of Paul D. Connor

that is as clear as I can express the weakness and strength of it.

Q Mr. Connor, I am going to hand you what has been previously [16] marked as Deposition Exhibit 56 and ask you to review that, sir.

A I have reviewed it.

Q All right, sir. Would you identify it for the record, please?

A Yes, sir. This is a letter which I wrote on October 1, 1969, to Honorable Crawford Martin, Attorney General. It supplements my letter of August 21 which is Exhibit 54.

Q Now, was it in the regular course of the business of the State Board of Insurance to refer certain matters which you felt appropriate to the Attorney General for his information?

A Yes, sir.

Q And was that within the power of the State Insurance Board?

A Yes, sir.

Q Did the Attorney General take any action as a result of your letter of October 1, 1969?

A I don't know.

Q Are you saying you are not aware of any action?

A I am not aware of any action.

Q All right, sir. Now, Mr. Connor, would you—

MR. KAISER: Strike that.

Q Mr. Connor, would the granting of an exemption such as the [17] one that you are personally holding, as in Exhibit 55, be a regulatory function of the Commissioner of the State Board of Insurance or the State Board of Insurance?

A It would be the Commissioner of Insurance.

Q Now, while the policy is under an exemption, is it still subject to the prohibitions and sanctions that are set out in the Insurance Code of the State of Texas?

Excerpts from Deposition of Paul D. Connor

A Yes.

Q May the Commissioner of Insurance or the State Board of Insurance take action against a company with respect to its issuance of an exempted policy if it deems appropriate?

A Yes. It could take action. Of course, there is no violation in the actual use of a policy which is exempt. I mean the issuance of an exempt policy is not of itself a violation because you have waived the requirement that it be approved.

Q Would it be fair to say that the issuance—that a company who was issuing an exempt policy was doing it with approval and the authority of the State Board of Texas—State Board of Insurance of Texas?

A It isn't truly an approval. If it were, of course, exemption and approval would be synonymous.

Q Maybe I misused the word approval. With the authority and under the authority of the State Board.

A In either case, exempted or approved, the issuing company [18] has a right insofar as the form of the contract is concerned, to use it.

Q Mr. Connor, going back to the exemption order which is Deposition Exhibit 55, in the fourth paragraph, do you recall in particular doing any additional work with respect to determining whether or not the exemption should be withdrawn or extended or just allowed to be carried on for an indefinite period of time?

A I don't have any recollection of it. In these Exhibits I believe there is a suggestion somewhere that the exemption is being granted to cover a rather urgent situation in which bids are being taken to provide the coverage that had been negotiated in the labor agreements. There is a suggestion that the exemption will later be withdrawn if there is a reason to withdraw it, but I have no memory of having followed up.

Excerpts from Deposition of Paul D. Connor

Q Mr. Connor, I suggest to you that the exemption has not been withdrawn. Would that indicate to you that the Commissioner of Insurance or the State Board of Insurance has not found a reason to withdraw it?

A It probably would. That would be the most logical explanation of it not having been withdrawn. Of course, it could be a matter of neglect, departmental neglect, and even the Attorney General—I see that it was referred to the Attorney General. I don't know what [19] action was taken over there. I am not suggesting neglect, but in fairness I must say that the failure to withdraw the exemption would not—it could be accounted for by other reasons than the equivalent of approval.

Q I understand, sir. Mr. Connor, a moment ago I asked you if a policy which was being issued under an exemption was subject to the same regulatory requirements that an approved policy would be subject to. Are you familiar with Article 21.21 of the Insurance Code of the State of Texas which pertains to unfair competition and unfair practices?

A Yes, sir.

Q I hand you a copy of the article or the book and let you look at it. Mr. Connor, during your tenure of some 26 years with the Insurance Commission, was it your experience that Article 21.21 of the Insurance Code was considered by the State Board of Insurance in determining whether or not to approve or disapprove a policy or even to grant an exemption?

A Yes, if a violation of 21.21 was embodied in the policy itself it would be disapproved for that reason.

Q All right, sir. Is Article 21.21 a statutory method of regulating the business of insurance within the State of Texas?

A Yes, sir.

[20] Q Upon whom is the authority conferred to fulfill that regulation?

Excerpts from Deposition of Paul D. Connor

A The Commissioner of Insurance.

Q Would an exempt policy form which is being issued by a company be subject to the provisions of Article 21.21 of the Insurance Code?

A Yes, sir.

Q Mr. Connor, are you familiar with Article 21.21-2 of the Insurance Code which pertains to unfair settlement practices?

A Yes, sir, I am familiar with it. It is a more recent enactment than the period we are talking about, of course.

Q Would a policy form which has been exempted and which is being issued by an insurance company be subject to the regulatory provisions contained in Article 21.21-2 of the Insurance Code?

A In my opinion it would.

Q All right, sir. Now, that particular article pertains to unfair claim settlement practices.

A Yes, sir.

Q Can you tell me, sir, who can take advantage of the provisions in that article? Maybe my question should be who is that article written to protect.

A Well, it is the policyholders' protection in mind. Yes, to protect the policyholder or the beneficiary.

[21] Q More generally would the article be written to protect anyone who might possibly have a claim against an insurance company?

A Yes, a policyholder claimant or policyholder beneficiary claimant. That is correct.

Q Now, Mr. Connor, I think you are familiar with the method of operation of Blue Shield under this particular prescription drug program. Blue Shield contracts with participating pharmacies who agree to sell prescription medication to subscribers of Blue Shield, and Blue Shield agrees to reimburse the participating pharmacies a certain amount for the prescription medicines that are dispensed. Are you familiar with that, sir?

Excerpts from Deposition of Paul D. Connor

A Yes, I am familiar with it, not with great detailed knowledge. I have glanced at the contract.

Q If a participating pharmacy had some form of a grievance against Blue Shield pertaining to its claim sent in under a participating pharmacy agreement, would it be able to take advantage of the provisions of Article 21.21-2?

A The claimant?

Q Yes, sir.

A I feel sure it would.

MR. PULLEN: I will have to object to that. This is getting more ridiculous by the minute. [22] That question is absolutely unlimited as to any type of claim. Certainly it is not the type of claim in the statute that is involved in this case. I am going to have to request that you make your question clear by specifying what type of claim you are referring to.

MR. CHURCH: Your objections are reserved until the time we present it to the Court.

MR. KAISER: Let me make it clear so that Mr. Pullen will understand.

Q As I mentioned to you, Mr. Connor, Blue Shield has contracted with various independent pharmacies, the pharmacies having agreed to furnish prescription medicines to Blue Shield's insured, and Blue Shield in that contract agrees to pay the pharmacies a certain amount for the medication dispensed. After the dispensing of the medication the pharmacist then sends a claim to Blue Shield for reimbursement. Now, my question was if a pharmacist has a grievance that arises out of a claim that it has sent to Blue Shield, and if it wants to take some action because of the claims practices of Blue Shield, could it take shelter in Article 21.21-2?

A The question is whether a pharmacist could, not whether the injured or disabled or sick person could?

Q Yes, sir.

Excerpts from Deposition of Paul D. Connor

A I don't know.

[23] Q Are you familiar with the Rules of Practice and Procedure before the State Board or Insurance and Commissioner of Insurance?

A Yes, sir.

Q I hand you, sir, what has been marked Deposition Exhibit Number 63 and suggest to you, sir, that that is a copy of those rules.

A Yes, sir, I am familiar with them.

Q To your knowledge, Mr. Connor, are exempt policies subject to the provisions of the Rules of Practice and Procedure of the State Board of Insurance?

A Yes, sir.

Q To your knowledge, Mr. Connor—

MR. KAISER: Strike that.

Q Mr. Connor, are exempt policies which are being issued in the State of Texas treated any differently by the State Board of Insurance and the Commissioner of Insurance than—

MR. KAISER: Strike that question. It is confusing.

Q Are exempt policies which have been issued by an individual insurance company treated any differently by the State Board of Insurance than approved policies?

A They are treated the same. There is no difference.

Q Mr. Connor, during your more than 26 years with the State [24] Board of Insurance did you ever have occasion to or participate in the drafting of legislation which ultimately ended up as part of our Insurance Code?

A Yes, sir, during most of my tenure I worked on legislation, insurance legislation and assisted in the drafting of a great deal of it.

Q Does the Insurance Code as it exists today contain much—very much of your work?

A Yes, I think it does. I know it does.

MR. KAISER: I have no further questions.

Excerpts from Deposition of Paul D. Connor

Questions by Mr. Church:

Q I notice, Mr. Connor, that you prepared these Rules for Practice and Procedure, did you not?

A Yes, sir, I did.

MR. CHURCH: Thank you. I have no more questions.

MR. SHADDOX: No questions.

CROSS EXAMINATION

Questions by Mr. Pullen:

Q Mr. Connor, I have some trouble appreciating the difference in operation between a policy form which is approved and one which is exempt. Can you explain to me what the difference is?

A Well, in either case the company wanting to issue the policy could issue it, and, of course, the policy [25] becomes a legal—I mean it becomes a contract between the insurance company and the policyholder. As well as I can explain it, the difference is that the approved form has received the okay or the official stamp of approval of the Commissioner, while in the case of an exempt form he has simply said that, "For reasons which I set forth here I will not approve nor disapprove this form." Incidentally, there are outside of the field we are talking about here, in other fields of insurance, many kinds of insurance contracts, policy forms which are not subject to approval of any authority.

Q What would be some examples of those?

A Policies issued by Farmer Mutual Insurance Companies, a number of policies covering inland marine risks, practically all of the ocean marine risks and policies of that sort.

Q As a practical matter, though, there is no difference in an exemption and an approval.

Excerpts from Deposition of Paul D. Connor

A There is no difference in that each are contracts and that the issuance of that contract, either approved or exempt, is allowed.

Q Is allowed, all right. What criteria, if any, went into a determination to exempt a policy contract rather than approve it?

A In the case that we are discussing here I can only say that [26] the criteria which is set forth in the Exhibits that we have been referring to.

Q You don't recall any other criteria?

A No, sir, I don't.

Q Do you recall any basic policies that was [*sic*] followed during your time with the Insurance Commission or State Board of Insurance as to when an exemption would be granted and when an approval would be granted?

A Only one instance that comes to mind. When the law initially went into effect which required approval under Article 3.42, of a great number of forms which before that enactment had not required approval, when that law went into effect, I believe, in 1957, or thereabouts, the Department at that time issued several exemption orders because of the inability to review the forms. They were forms which had previously been screened to some extent but not subjected to approval under the new law, therefore they were blanketly exempted. Beyond that time I don't recall any criteria specified for approving or exempting.

Q Was it a usual thing for a policy form which had been disapproved to later have an exemption granted on it?

A I don't think it is usual, no.

Q How many instances can you recall where this occurred?

A I don't recall any other instance.

[27] Q In connection with the exemption order were there any discussions with anyone from Blue Cross-Blue

Excerpts from Deposition of Paul D. Connor

Shield or anyone representing those that that you can recall?

A The letter indicates, this Exhibit 56, that there was an understanding with Mr. Philip Overton—he was the representative of Blue Cross at that time and perhaps still does. I don't know.

Q Did you ever have any discussion or correspondence with Steve G. McDonald?

A I don't believe so. I don't recall it.

Q How about Jack Ponder?

A I don't remember that either. I know Jack Ponder very slightly, but I don't recall any correspondence or discussion with him.

Q What about the discrimination in benefits, was that considered a very stringent question with regard to the prepaid prescription coverage?

A I notice that the disapproval order which is Exhibit 53, part of the basis for disapproval was discrimination. I don't know whether it was considered to be very serious or whether it was later decided that it was not discrimination.

Q What was the question under the Texas Antitrust and Antimonopoly Statutes?

A I don't really recall the specific statute or the specific [28] theory under which the antitrust-antimonopoly laws were brought into play. I can recall it only generally.

Q You referred to Deposition Exhibits 54 and 56 which are letters to Crawford Martin, Attorney General of Texas, which I believe you wrote. Is that correct?

A Yes, sir, I did.

Q Looking at Exhibit 54, which is the letter of August 21, '69, that did not request any action by the Attorney General, did it?

A No. I see no request that the Attorney General take action.

Excerpts from Deposition of Paul D. Connor

Q And looking at Deposition Exhibit 56, which is the subsequent letter of October 1, '69, also I believe from you to Crawford Martin, Attorney General, I believe you say, "We are making no opinion request at this time." Is that not correct?

A That's correct.

Q All right, sir. Do you ever recall any subsequent discussions with anyone from the Attorney General's Office with respect to this question?

A No, sir, I don't.

Q Now, the exemption order in the second paragraph says it "shall also apply to any form, identical in content to form CC-OHDS-2," which as I see it, is the first seven pages of Deposition Exhibit 52. Am I correct in that?

[29] A I don't know. The usual way of referring to a form is by the number which appears here on the front left page, and if it was fastened together or submitted as a unit it would include all of it. I don't know.

Q Well, I notice that the last two pages seem [*sic*] to be called PDPA-1 or something as best I can read it. Do you have any recollection whether it was considered that the participating drug pharmacy agreement was part of the drug supplement insurance contract?

A I don't have any recollection, except to note here that the exemption order refers to—describes these as drug service contracts, but I have no independent recollection.

Q All right, sir. Do you know of any place in the Texas Insurance Code where the State Board of Insurance is given jurisdiction over independent pharmacists?

A No, sir.

Q Does the State Board of Insurance have any antitrust or monopoly jurisdiction?

A I don't believe that it has jurisdiction to prosecute antitrust and antimonopoly cases. I know it does not. As

Excerpts from Deposition of Paul D. Connor

would be indicated here, it would not knowingly approve a vehicle by which these laws could be—would be violated.

Q You mentioned earlier, I believe, that you reviewed this [30] file prior to testifying today very briefly. Is that not correct?

A Yes, sir.

Q Was that done at anyone's request?

A Yes, sir, Mr. Kaiser's request.

Q How did that come about? Did he call you on the phone or write to you or see you in person?

A He saw me in person two or three weeks ago.

Q Did he explain what this case was about?

A Briefly, yes, sir.

Q When you left the State Board of Insurance in 1972, did you begin your practice with Flahive and Ogden?

A Yes, sir.

Q What type of practice do you do, Mr. Connor?

A My practice is largely in insurance administrative law.

Q What does that entail?

A The organization of companies, mergers; I am counsel for several companies, equivalent to general counsel for investments, and general corporate work for insurance companies mainly.

Q Do you do any work for Blue Cross or Blue Shield or any of their related companies?

A No, sir.

Q Does your firm?

A I don't believe that the firm does. I am not sure, but I [31] have not done any work for them.

Q Do you represent any companies who do health and accident insurance?

A Yes, sir.

Q What companies?

Excerpts from Deposition of Paul D. Connor

A I have probably—are you speaking of me personally or the firm?

Q You or the firm, either one.

A I would think that our—in the companies which we represent who do—who are authorized to write health and accident insurance, they would be rather extensive in number, maybe fifty companies or more to some degree of representation.

Q What about the rest of the firm's business, how many other people are there in the firm?

A There are eight attorneys.

Q And would it be fair to say that the firm's major practice or a good part of it is defense of claims against insurance companies?

A We do a great deal of that, yes, sir. That is correct. We represent insurance companies as defense attorneys.

Q Is there anything in writing in the form of a memorandum or rule or regulation which the State Insurance Board uses in determining when to issue an exemption order? Are they given any criteria or guidelines?

[32] A I am not aware of any.

Q It is done on a case by case basis?

A That is correct except for the initial exemptions which I discussed earlier.

MR. PULLEN: No further questions.

MR. SHADDOX: No questions.

MR. CHURCH: I have no questions.

MR. KAISER: I have just a couple more.

REDIRECT EXAMINATION

Questions by Mr. Kaiser:

Q Mr. Connor, I believe you testified in response to Mr. Pullen's questions that the State Board of Insurance has no jurisdiction to prosecute antitrust violations. Is that correct?

Excerpts from Deposition of Paul D. Connor

A I am sure that is the law.

Q Does the State Board of Insurance have jurisdiction to regulate the industry of insurance within the State of Texas?

A Yes, sir.

Q Is there specific legislation in the State of Texas and in the Insurance Code of the State of Texas which prescribes, permits or otherwise regulates the insurance industry and authorizes enforcement of penalties for infractions of the State Insurance Code?

A Yes, sir.

[33] Q Is that done under a scheme of what we might call administrative supervision or regulation?

A Yes.

MR. KAISER: No further questions.

MR. PULLEN: No questions.

* * * *

EXCERPTS FROM DEPOSITION OF ROBERT C. McANELLY, DECEMBER 30, 1975

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

---

* * * *

[3] DIRECT EXAMINATION

Questions by Mr. Macon:

Q Please state your full name.

A Robert Coleman McAnelly.

Q Mr. McAnelly, were you served with a subpoena requiring you to appear at this deposition?

A I was.

Q What is your residence?

A 2504 Quarry Road in Austin, Texas.

[4] Q By whom are you employed?

A By the Texas State Board of Insurance.

Q What is your present position with the State Board of Insurance?

A Manager of the Credit Life Section, Policy Approval Division, State Board of Insurance.

Q Mr. McAnelly, have you ever had your deposition taken before?

A Yes, in, of course, a different matter.

MR. KAISER: I hope so.

A About two years ago, I guess.

Q Do you understand that you are answering questions under oath and that your testimony under certain instances may be used at the trial of this case?

A I do.

Q Let me introduce everyone here on the record. My name is Larry Macon, seated to my right is Keith Kaiser, and we represent Group Life and Health Insurance Company which throughout this deposition we will refer to as

Excerpts from Deposition of Robert C. McAnelly

Blue Shield. At your immediate right is Mr. William Church who represents Walgreens. Farther to his right is Mr. Joel Pullen who represents the plaintiffs in this case, and in just a moment we expect back Mr. Charles Shaddox who represents Rieger-Medi-Save. Basically for your information this is an anti-trust suit brought by [5] the plaintiffs against Blue Shield, Walgreens, Rieger/Medi-Save and Sommers Drugstores. If during this deposition you don't understand my questions or you would like for me to repeat them, please ask me to either repeat them or explain any aspect of them you do not understand. Do you understand?

A I understand, right.

Q How long have you been employed by the State Board of Insurance?

A Since June 6 of 1956.

Q How long have you held your present position?

A My present position since March of 1970.

Q What position did you hold prior to March, 1970?

A Prior to that date I was supervisor of the Health and Group Life Unit—Health and Group Life Policy Unit of the Life Division. That title was sometimes referred to as supervisor of A. & H. and Group Life Policy Unit.

Q A. & H. would refer to Accident and Health?

A Right.

Q What were your functions and responsibilities in that position?

A I was supervising a unit whose duties were to review and approve or disapprove life and/or health insurance policy forms which were submitted by insurers for approval pursuant to Article 3.42 of the Texas Insurance [6] Code.

Q Are the functions of your unit now being performed by the Policy Approval Division?

A That's correct, yes.

Q Did—

Excerpts from Deposition of Robert C. McAnelly

MR. PULLEN: Excuse me. Which unit are you talking about, his existing one or prior one?

Q The functions of the prior unit, are they now performed by the Policy Approval Division?

A Yes. In effect, this is all the same division. It has been a policy approval operation for a number of years, ever since I have been associated with it, and initially I was involved in policy approval involving all types of life and health policy forms with the exception of individual life. In other words, my particular area covered all group life, all group health, all individual health and group annuity, and when I moved out of that area and into the more specialized area of credit life insurance, my present area, then in effect I remained within the same area of policy approval operation but into a more specialized unit of it.

Q How long have you been involved in Policy Approval?

A Since June 6, 1956.

Q Which is—

A The date that I was employed first by the State Board of [7] Insurance.

Q For what period were you supervisor of the A & H and Group Health Unit?

MR. KAISER: A & H and Group Life.

Q And Group Life?

A It was from late in 1957 as I recall, about November of '57, up until March of 1970.

Q During 1969 and '70 how many people did you supervise in this capacity?

A Let's see. There were three to four people that I was supervising at that time. These people were policy analysts.

Q Would you explain what would happen when a policy of insurance would be submitted to your section for approval, when it is submitted to your section?

Excerpts from Deposition of Robert C. McAnelly

A The mail, as it came in relative to my unit came through my desk. I would then route the submissions to the particular policy analyst that was responsible for that type of a policy. For instance, we had a group life policy analyst, we had individual policy analysts, individual health policy analysts, and we also had one policy analyst who was responsible for forms of mutual assessment type companies, and then we also had one policy analyst who reviewed group health forms, and so having distributed the forms to the particular analysts involved, they would [8] then proceed to analyze, read the form submitted and would reach conclusions as to whether the forms could be approved as not being in violation of any statute, or if they found a violation, then the analyst would write out their objection to the specific provision objected to and would—I would then make up an order—if it were a disapproval I would make up an order specifying the basis for disapproval of that particular form. That order, once prepared was signed by myself and at that time the section manager, Don Odum, and would then go to the commissioner for his signature and this would then become an official order of the commissioner of insurance.

Q Would the same procedure follow when you approved a policy of insurance?

A That is correct. Those forms which could be approved were listed on an order by name of company and by the form number designation and again, following my signature and that of the section manager it then went to the commissioner for his approval.

Q Was every policy that came to your unit either approved or disapproved?

A Normally they would either be approved or disapproved, although in some cases we might have say informal discussion with the submitting insurer, and in some cases the company of its own volition would voluntarily withdraw.

* * * *

Excerpts from Deposition of Robert C. McAnelly

[10] Q Did your unit ever purposefully allow an automatic approval to occur?

A Not purposely, no. Normally it would be dependent on the work load, that we weren't able to get to it.

Q Mr. McAnelly, I hand you what the court reporter has marked as Deposition Exhibit No. 52. Are you familiar with that document?

A Yes.

Q Would you describe it?

A This by its own description is an experience rated group medical-surgical insurance policy, and it is a policy form of Group Life & Health Insurance Company, and it is identified by Form No. CC-OHDS-2, and it bears a stamp indicating disapproval by commissioner's order no. 29701 dated June 18, 1969.

Q Was the policy which has been marked Deposition Exhibit No. 52 submitted to your unit?

A Yes, it was.

Q Did you review it when it was submitted to your unit?

A This is the drug supplement to the policy that I just described. Yes, I did review this form.

Q Did you review the drug supplement itself?

A Yes. As a matter of fact, this particular form is a drug supplement to that prior approved group policy form.

Q But the drug supplement itself was submitted to your unit [11] for approval; is that correct?

A That is correct.

Q Will you turn on Deposition Exhibit 52 to the last two pages? Could you identify the last two pages of Deposition Exhibit 52?

A The last two pages constitute the participating drug pharmacy agreement that was to be drafted and agreed upon between the participating drug pharmacy and Group Life & Health Insurance Company.

Q Was all of Deposition Exhibit 52, including the last two pages, submitted to you as a unit?

A Yes, it was.

Q Do you recall who in your section besides yourself reviewed Deposition Exhibit 52?

A To the best of my recollection, I personally reviewed this form because it was in the nature of an innovation, and I subsequently conferred with Mr. Paul D. Connor who was then our Chief Clerk and Assistant to the Commissioner of insurance, and Mr. Connor at that time also served as legal counsel or legal adviser for policy approval matters for the department—for the State Board of Insurance.

Q As a result of your review did you make a determination about whether or not to approve Deposition Exhibit 52?

A Yes, I did. I raised the objection that it would be in violation of Article—well, Article 21.21, specifically [12] Section 4, Sub-section 7B of the Texas Insurance Code which prohibits unfair discrimination as to rates or benefits provided to a class of people of essentially the same class and the same risk hazard.

Q What was the final result of your determination, that it should be disapproved?

A It was my opinion that the form should be disapproved for that reason, as being—or containing provisions in violation of Article 21-21, Section 4, sub-section 7, paragraph B.

Q As a result of your decision was an official order of the Commissioner of Insurance issued?

A Yes, an official order was issued pursuant to that objection plus another.

Q Who raised the other objection?

A The other objection was raised by Mr. Paul D. Connor to whom I have referred as our assistant to the commissioner. As a matter of fact, the way this evolved

was that having raised my objection as I saw it under insurance law, we then had discussions with Mr. Paul D. Connor, and the ultimate result was that two objections were specified in the disapproval order.

Q Was the end result of your decision the official order that is marked Deposition Exhibit No. 53?

A That is correct.

[13] Q Subsequent to the disapproval which is noted by Deposition Exhibit No. 53, was any further action taken with respect to the policy?

A Yes, there was subsequent discussion, and then subsequent formal action taken by a later issued official order of the commissioner.

Q Is the official order you referred to Deposition Exhibit 55?

A That is correct.

Q What did that order do?

A This order, by its own provisions, it superceded the prior order, Exhibit 53, and exempted this form from the approval requirements of Article 3.42 of the Texas Insurance Code.

Q Did the order nullify and reverse the previous order of the commissioner?

A Yes. The order by its own provisions states "to the extent that this exemption order conflicts with commissioner's Order No. 29701 dated June 18, 1969, Order No. 29701, is superceded."

Q To your knowledge did the exemption order exempt the package which is Deposition Exhibit 52, from anything other than the filing requirements pursuant to Article 3.42?

A It exempted it from the filing requirements and the carrying through of the approval requirement.

[14] Q Did it exempt it from anything other than the filing and the approval?

A No.

Excerpts from Deposition of Robert C. McAnelly

Q Is a company which has a policy that has been exempted pursuant to Article 3.42 still subject to the unfair competition and unfair practices act which is Article 21.21?

A Would you restate that?

Q Okay. If you have a company that has had a policy exempted pursuant to 3.42, is that company still subject to the provisions and prohibitions there contained in Article 21.21, the unfair practices act?

A I would say, yes.

Q Is a company that has an exempted policy still subject to the claims settlement provisions of Article 21.21-2?

MR. PULLEN: With respect to the exempted policy or generally?

Q Generally?

A You said with respect to the claims settlement provisions—

Q Are you familiar with—

A —of Article 21.21.

Q Are you familiar with the unfair claims settlement act?

A I am generally familiar with Article 21.21, yes, unfair practices.

Q There is a section of Article 21.21 that has been designated [15] as -2 which deals with settlement of claims.

A Oh.

Q Are you familiar with that?

A Yes.

Q If a company has a policy that has been exempted under 3.42, is the company still subject to the provisions of this section dealing with unfair claims or unfair settlement of claims?

A I would say, yes.

Q Can an exemption that has been issued pursuant to Article 3.42 be withdrawn by the insurance commissioner?

Excerpts from Deposition of Robert C. McAnelly

A Yes, it may by authority of Article 3.42 itself.

Q As a practical matter, is there really any difference between a policy that has been approved by the insurance commissioner and a policy that has been exempted pursuant to Article 3.42?

A I would say basically there is no difference. It simply means that that form may be legally used.

Q And it may be—

A Whether it has been formally approved or whether it has been exempted.

Q And it may be used in the same manner that an approved form could. Is that correct?

A Right.

* * * *

[20] A In other words, as I see the requirement of Article 3.42, it relates to the authorized use of certain specified policy forms.

Q Yes.

A Okay. And so in effect it says that in order for an insurer to legally use such policy forms, such form must either be affirmatively approved by official action of the Commissioner of Insurance or it must be specifically exempted by official action of the Commissioner of Insurance. Either action, as I see it, leaves the company free to use that form.

Q Are you familiar with the criteria or factors which would be considered in determining whether to let the form be used by virtue of approving it or by virtue of exempting it from the requirement?

A Of course, the normal and most usual procedure is the formal approval of the form.

Q Yes.

A But the exemption is a discretionary thing on the part of the commissioner based upon specific circumstances.

Q Now, what are those circumstances as you understand them?

Excerpts from Deposition of Robert C. McAnelly

A They could vary. For instance, at the time that article 3.42 as presently constituted became effective on August 22nd, '57, the prior article 3.42 had only required [21] the filing of forms but the specific statute that related to specific types of forms, for instance, group life forms, the group life law, article 3.50, had always required approval of such forms, so therefore it was deemed unnecessary when 3.42 came along as revised, and again required approval, it was deemed unnecessary to recall all those group life forms which had already been approved because their specific statute required it, just to comply with this new requirement for approval, so therefore such forms were exempted. That was one of the circumstances where it was deemed unnecessary to reapprove forms which had previously been approved.

Q Were you surprised when the prior disapproval was changed through the exemption order?

A I don't recall that I was surprised because I had been—although I was not in on all of the conferences that led up to this exemption, I was aware that a problem had been raised of the fact that another insurer was currently using a form similar to these that were objected to.

Q What was your objection with regard to the unfair discrimination?

A The objection there, as I saw it, was the possibility of unfair discrimination in benefits as between insureds of the same class by reason of the fact that a particular insured might live in a locale where one of the [22] participating pharmacists may not be available and therefore it would seem to discriminate against him as to benefits as opposed to that insured person who happened to live convenient to a participating pharmacy.

Q All right.

A We have had similar precedent of this type of unfair discrimination by reason of location.

Excerpts from Deposition of Robert C. McAnelly

MR. PULLEN: No further questions. Thank you.
MR. KAISER: We may have one or two more.
MR. SHADDOX: No questions.
MR. CHURCH: No questions.

REDIRECT EXAMINATION

Questions by Mr. Kaiser:

Q Mr. McAnelly, let me ask you, sir, if when a policy form is exempted under article 3.42 and the insurance company begins to issue that particular policy form, is the insurance company during the course of the issuance of that policy still subject to all of the sanctions and prohibitions and regulatory devices set out in the insurance code?

A Yes.

Q During the period of time that an insurance company is issuing a policy which has received an exemption, is it [23] still subject to the continued supervision and regulation by the State Board of Insurance?

A Yes.

Q Mr. McAnelly, is the Commissioner of Insurance given broad discretionary powers in regulating the conduct of insurance companies and their issuance of policies in the state of Texas?

A You say in the regulation of insurance companies and the issuance of policies?

Q Yes, sir. Let me just rephrase the question. Is the Commissioner of Insurance given broad discretionary powers in regulating insurance companies with respect to their issuance of policies in the state of Texas?

A Of course, the commissioner's authority is only in the law, and as relates to the approval of life and health forms, article 3.42 is the discretionary authority of which I am aware.

Excerpts from Deposition of Robert C. McAnelly

Q In article 3.42 does the commissioner have broad discretionary powers?

A I would say yes, as defined by provision E. of article 3.42.

* * * *

EXCERPTS FROM DEPOSITION OF DONALD H. BUNNELL, DECEMBER 20, 1975

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

---

[3] * * * *

DIRECT EXAMINATION

Questions by Mr. Kaiser:

Q State your name, please, sir.

A Donald H. Bunnell.

Q What is your residence address, Mr. Bunnell?

A 3600-C, Las Colinas, FM2222 Austin, Texas, 78731.

Q By whom are you employed, Mr. Bunnell?

A State Board of Insurance, State of Texas.

Q What is your title, sir?

[4] A I am the Manager of the Company License Section.

Q Mr. Bunnell, have you ever had your deposition taken before?

A Not in this agency.

Q Well, have you had your deposition taken before, ever?

A I have had a deposition on prior work in prior years, different locations.

Q Can you tell me in what connection the deposition was taken?

A They were taken in connection with insurance claims as an adjuster and investigator.

Q By whom were you employed at that time?

A Hammerman & Gainer. They are located in Austin, Texas.

Excerpts From Deposition of Donald H. Bunnell

Q All right, sir.
A They are independent insurance adjusters.

* * * *

[7] Q Mr. Bunnell, you said that you were the Manager of the Company License Section. Is that correct?
A Yes, sir.
Q Can you tell me what your duties are as the Manager of the Company License Section?
A Very basically I am responsible for all of the activities involving the company records and documents for those companies that are licensed in the State of Texas, to include the initial incorporation of the domestic companies, and the documents that are related to the foreign admissions, and if I summarized it in a real brief way I could say that it is a matter of from birth to death of a company, and whether or not this involves later on an amendment or change to their Articles of Incorporation or By-Laws, types of coverage that they may be authorized to write, their applications for them, the areas related to any mergers that are required to be filed with the department, any re-insurance agreements that are required to be filed, other actions that involve those companies [8] with other companies, as I said, the quickest way is to say from birth to death. We currently have over 1700 companies licensed in the State of Texas. In addition to this, we have a number of areas wherein we have to check into the management activities of companies along with their financial conditions, and many of those areas are allied with my work, although we have other specialists who actually are statement analysts and accountants who actually handle that particular phase of it. But the over-all is the activity as far as the records of the companies are concerned and the activities of the companies.

Excerpts From Deposition of Donald H. Bunnell

Q All right, sir. Are the records of the Company License Section maintained under your supervision and control?
A Yes, sir.
Q Are you the custodian of the records maintained in the Company License Section?
A I think in the general definition of custodian I would be considered as the custodian, although I do not actually have that official type of a title. I have other people who work under my supervision and direction who actually are directly responsible for the actual records in certain storage cabinets that we have here in the department.
Q Mr. Bunnell, are you familiar with the corporate organization of Group Life and Health Insurance Company?
[9] A Of Dallas, Texas?
Q Yes, sir.
A Yes, sir, I am familiar with that company to the extent that we consider it as a Chapter 3 type life insurance company under our Code, and I believe that is a stock life insurance company.
Q Can you tell me or just elaborate a little bit on what a Chapter 3 company is?
A Well, a Chapter 3 company is a company which is authorized to be a stock company. The capital and surplus of the company required as a beginning is $100,000 capital and $100,000 surplus at the present time. It is by short version referred to as a stock life company. We have in the neighborhood of twenty-nine or thirty different types of companies, and this is one type of the different types of companies we have in this seventeen hundred plus companies licensed.
Q Now, Mr. Bunnell, would you tell me how a Chapter 3 company is formed?

Excerpts From Deposition of Donald H. Bunnell

A Well, I can give you some general basics on it, but wtihout having—

Q Let me rephrase the question. Would you tell me what a Chapter 3 company is required to do? After they have already gotten their Articles of Incorporation prepared, who do they file them with?

[10] A In the beginning—to answer your question, they file them with the Company License Section, but in the beginning they must have a name reservation and the name be reserved and approved by the department before they can start the corporate papers being filed with us.

Q All right, sir. Now, it is my understanding that the Articles of Incorporation are filed with the State Board of Insurance as opposed to the Secretary of State for a Chapter 3 corporation. It that correct?

A This is correct, and I would add this is true not only for a domestic company but would be what we call a foreign company which is one outside of the State of Texas seeking admission to Texas. We are dealing with this company as a Texas domestic company rather than a foreign company.

Q All right. Is a Chapter 3 company required to comply with the State Insurance Code or with the Texas Business Corporation Act in forming a corporation?

A Both are involved, sir.

Q Does a Chapter 3 company ever have to send any of its Articles of Incorporation or amendments thereto or any of its corporate documents to the Secretary of State?

A I am not aware of their being required to do so. As far as the Secretary of State is concerned, I am not aware of it.

[11] Q After the Articles of Incorporation of a Chapter 3 company are submitted to the Company License Section, what happens then?

Excerpts From Deposition of Donald H. Bunnell

A The documents that are required are sent to our Legal Section for review in accordance with the approved checklist for the incorporation or organization of a new Texas domestic company. The Legal Department has the responsibility from that point until we have a public hearing, recommendation has been made by Commissioner's Order to send those documents to the Texas Attorney-General's Office, and the Texas Attorney-General's Office has certified by affixing his signature and seal on the documents as being approved. Once this is done the Texas Attorney-General's Office returns those documents to Company License Section here and in turn we prepare the final Order to issue a license to the company. There are two instruments that are prepared. One is a Commissioner's Order for the license and the other one is the actual license or Certificate of Authority as is the term that we use.

Q Am I to understand, Mr. Bunnell, that the entire decision as to whether or not to grant a Certificate of Authority to a domestic Chapter 3 company rests completely upon the State Board of Insurance?

A No, sir, that is not correct.

[12] Q Well, pardon me. The State Board of Insurance and the State Attorney-General?

A The two offices, the State Board of Insurance and the Texas Attorney-General's Office both have separate requirements. To my knowledge they are the only two State agencies or offices who are involved in the final decision to issue a Certificate of Authority.

Q All right. Are the Articles—to your knowledge, sir, are the Articles of Incorporation or any amendments ever passed upon by the Secretary of State?

A For a Chapter 3 company or this company, Group Life and Health Insurance Company, I am not aware of any.

Excerpts From Deposition of Donald H. Bunnell

Q All right, sir. I have had two documents marked, one as Deposition Exhibit 64 and the other as Deposition Exhibit 65. Deposition Exhibit 64 is a certified copy of the original Articles of Incorporation of American Life Insurance Company, Fort Worth, Texas, which was filed December 30, 1952, and consists of four pages. Also on Exhibit 64 is an amendment changing the home office to Houston, Texas, filed on April 16, 1956 consisting of five pages. The next item is an amendment filed May 9, 1956, consisting of five pages. The next document is an amendment changing the name and home office to Group Life and Health Insurance Company, Dallas, Texas, filed December 1, 1960, consisting of five pages. The [13] next document is an amendment filed January 29, 1965, consisting of five pages. The last document is an amendment filed January 14, 1974, consisting of five pages.

MR. KAISER: Would all of you stipulate that these are—that these certified copies constitute true and correct copies of the documents contained in the State Board of Insurance Company License Section file?

MR. CHURCH: I will stipulate it.

MR. SHADDOX: So stipulated.

MR. CHURCH: And, Joel Pullen, speak up.

MR. KAISER: Mr. Pullen nodded his head, "Yes."

MR. PULLEN: Nodded, yes.

MR. CHURCH: I wanted him to say "Yes" and Bill Moore to get it.

Q Deposition Exhibit No. 65 is a certified copy of a Certificate of Authority No. 2246 dated December 15, 1960, issued to Group Life and Health Insurance Company, Dallas, Texas, consisting of one page.

MR. KAISER: I would ask that all of Counsel again stipulate that—

MR. CHURCH: I so stipulate.

MR. KAISER: —is a true and correct copy of the Certificate of Authority which is on file in the Company License Section of the State Board of [14] Insurance.

Excerpts From Deposition of Donald H. Bunnell

MR. PULLEN: All right, so stipulated.

MR. SHADDOX: Correct.

Q Mr. Bunnell, I am going to hand you what has been marked as Deposition Exhibit 65, which is a certified copy of the Certificate of Authority of Group Life and Health Insurance Company.

A All right, sir.

Q I will ask you, sir, what an insurance company is authorized to do, once a Certificate of Authority is issued.

MR. KAISER: Let me strike that.

Q I will ask you, sir, what a Chapter 3 insurance company is authorized to do after a Certificate of Authority is issued?

A The company under Chapter 3 is authorized in accordance with the Certificate of Authority, and in this case with Group Life and Health Insurance Company of Dallas, Texas, it was authorized to transact the business of life, health and accident insurance as provided in the provisions of Chapter 3 of our Texas Insurance Code, and as may be either amended or changed or modified by further Board Orders or Board decisions that may become involved in the various regulations or statutory authority that is currently authorized.

Q All right, sir. With respect to Chapter 3 companies, [15] in return for being authorized to transact business of life, health and accident insurance, does a Chapter 3 company subject itself to the regulation and control of the State Board of Insurance?

A Yes, sir, it does.

Q Does the State Board of Insurance, and in particular, the Company License Section, maintain continuing supervision and control and monitoring of the business of a Chapter 3 company?

A Within the definitions of what you mean by supervision, monitoring and control, my answer would be yes. There are certain statutory requirements, and then there

are certain requirements that may come forth that require more frequent review than is required statutorily.

Q What would be the occasions in the Company License Section for you to take any action with respect to Group Life and Health Insurance Company?

A As far as Company License Section itself is concerned, it can be many different things which may result from actions taken in other areas of the department. The most well known or the most discussed area that could occur is if the capital and/or surplus of the company was impaired. This is a means to have action taken against the company, either bring it up to the minimum or if there is some other financial problem which is [16] handled through our examination staff and through our statement analysts, again, this is not directly the Company License responsibility. We are, you might say, at the end of the procedure here after such a fact may have been determined. This is just one of many areas. There may be some question in regard to the management of the company. There are several areas of the department that would be involved. Ours has an interest in this also. So we may have reasons given to us from other areas as to why we would become involved in a public hearing on the company.

Q All right, sir. What statutory provisions or regulatory provisions does the Company License Section utilize in supervising the existence of a Chapter 3 company—the existence and the operation of a Chapter 3 company?

A We are still—the basic statutory requirement is Chapter 3 of the Texas Insurance Code, and, of course, there are certain provisions of Board responsibility, and when I speak of Board I am speaking of the State Board as a three-member Board. They have a separate responsibility above what the Commissioner of Insurance has that is covered in Chapter 1 of the Code.

* * * *

[18] Q Is a duly authorized Chapter 3 company subject to all of the provisions of the Insurance Code of the State of Texas?

A A Chapter 3 company would not be subject to all of the provisions of the Texas Insurance Code. They would be subject to only those provisions in Chapter 3, the Board Orders, Commissioner's Orders or directives that may be applied to Chapter 3 as results from Chapter 1 which is the general administrative chapter. So to give as an example, a Chapter 9 company is a fraternal benefit society, and they are subject to Chapter 9 and Chapter 1 proceedings. A Chapter 22 company is a [19] stipulated premium company, and it is subject to Chapter 22, some portions of Chapter 14 and also Chapter 1 of the Code.

Q Is a Chapter 3 company subject to the provisions of Chapter 21 of the Insurance Code which contains the general provisions?

A That is an area of the Code which I do limited work directly with, but you have reminded me that there is this area of general provisions, and also those which pertain to agents in Chapter 21.

Q All right, sir. Is a Chapter 3 company authorized to transact business of insurance outside of the State of Texas?

A A Chapter 3 domestic company in Texas may operate in any State outside of the State of Texas provided that they meet the requirements of that State.

Q My question is then does the Certificate of Authority which has been marked here as Exhibit 65 limit—as far as the State Board of Insurance is concerned, does it limit where Group Life and Health Insurance Company can transact business?

A Yes, sir.

Q And what are the limitations?

A Authorized to transact business in the State of Texas only.

* * * *

ARTICLES OF INCORPORATION OF GROUP LIFE AND HEALTH INSURANCE COMPANY (WITH AMENDMENTS) ("EXHIBIT 64" TO DEPOSITION OF DONALD H. BUNNELL, DECEMBER 30, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

Articles of Incorporation

277

Form A-179

STATE BOARD OF INSURANCE
STATE OF TEXAS

Nº 14125

IT IS HEREBY CERTIFIED That the instrument which is hereunto attached is a true, full and correct copy of

Articles of Incorporation of GROUP LIFE AND HEALTH INSURANCE COMPANY, Dallas, Texas, and all Amendments thereto as follows:

(1) Original Articles of Incorporation of AMERICAN SAVINGS LIFE INSURANCE COMPANY, Fort Worth, Texas, filed December 30, 1952, consisting of four (4) pages;

(2) Amendment changing the home office to Houston, Texas, filed April 16, 1956, consisting of five (5) pages;

(3) Amendment filed May 9, 1956, consisting of five (5) pages;

(4) Amendment changing the name and home office to GROUP LIFE AND HEALTH INSURANCE COMPANY, Dallas, Texas, filed December 1, 1960, consisting of five (5) pages;

(5) Amendment filed January 29, 1965, consisting of six (6) pages;

(6) Amendment filed January 14, 1974, consisting of five (5) pages;

now on file in and forming a part of the records of the State Board of Insurance.
IN WITNESS WHEREOF, I hereunto subscribe my name and affix the Seal of the State Board of Insurance, in the City of Austin, State of Texas, this

10th day of December, 1975

JOSEPH D. HAWKINS
COMMISSIONER OF INSURANCE

By Patricia L. Gustafson
Patricia L. Gustafson
Assistant Manager
Company License Section

THE ATTORNEY GENERAL
OF TEXAS

Austin 11, Texas

Austin, December 29, 1952

CERTIFICATE

I hereby certify that the attached original Articles of Incorporation of American Savings Life Insurance Company were submitted to me on the 29th day of December, 1952 and, having carefully examined them, I find them to be in accordance with the law of Texas and of the United States.

/s/ Price Daniel
PRICE DANIEL
Attorney General

/s/ Joe S. Moore
Assistant

[SEAL]

[Filed in the Department of Insurance of the State of Texas This 30th Day of Dec. 1952, Commissioner of LIFE INSURANCE. By VL]

THE STATE OF TEXAS,) KNOW ALL MEN
COUNTY OF TARRANT.) BY THESE PRESENTS:

That we, JACK H. HOWARD, N. S. STERN, and JAMES D. MCTAGGART, all citizens of Texas, under and by virtue of the laws of this State, do hereby voluntarily associate

ourselves for the purpose of forming an insurance corporation under and by virtue of the provisions of the Insurance Code of the State of Texas upon the following terms and conditions:

1.

The name of the corporation shall be, —

AMERICAN SAVINGS LIFE INSURANCE COMPANY.

2.

The name and place of residence of each of the incorporators are as follows:

Jack H. Howard	Dallas, Texas
N.S. Stern	Dallas, Texas
James D. McTaggart	Fort Worth, Texas

3.

The location of the home office of said corporation is Fort Worth, Tarrant County, Texas.

4.

The kind or kinds of insurance business said corporation proposes to transact is that of a life, health and accident insurance company as such companies are defined in Article 3.03 of the Texas Insurance Code. Said company shall be a limited capital stock company within the meaning of said Article 3.03 of the Insurance Code of the State of Texas, engaging generally in the business of life, health and accident insurance but with the limitations prescribed in said Article.

5.

The amount of its capital stock is TWENTY FIVE THOUSAND AND NO/100 ($25,000.00) DOLLARS, all

of which stock has been subscribed and paid for. There has also been paid in a surplus of FIVE THOUSAND AND NO/100 ($5,000.00) DOLLARS.

6.

The period of time said corporation is to exist is to be five hundred (500) years.

7.

The amount of said capital stock is divided into twenty five hundred (2500) shares, of the par value of TEN ($10.00) DOLLARS each, and the amount subscribed and paid by each of the incorporators is as follows:

Name	*Shares Subscribed*	*Amount Paid*
Jack H. Howard	833-1/3	$10,000.00
N.S. Stern	833-1/3	$10,000.00
James D. McTaggart	833-1/3	$10,000.00

Attached hereto and marked Exhibit "A" is an affidavit over the signature of said incorporators as evidence of the payment of same.

8.

The number of directors shall be not less than five (5) nor more than nine (9), and the names and residences of those appointed for the first year are as follows:

Jack H. Howard	2830 Clydedale Drive, Dallas, Texas
N.S. Stern	4336 Shenandoah, Dallas, Texas
James D. McTaggart	1211 Continental Life Bldg., Ft. Worth, Tex.
Quin P. Courtney, Jr.	1211 Continental Life Bldg., Ft. Worth, Tex.
R.W. Decker	1211 Continental Life Bldg., Ft. Worth, Tex.

IN WITNESS WHEREOF, we hereunto sign our names this 2nd day of December, 1952.

/s/ Jack H. Howard
JACK H. HOWARD

/s/ N. S. Stern
N. S. STERN

/s/ James D. McTaggart
JAMES D. MCTAGGART

THE STATE OF TEXAS,)
COUNTY OF TARRANT.)

BEFORE ME, the undersigned authority, on this day personally appeared JACK H. HOWARD, N. S. STERN and JAMES D. McTAGGART, known to me to be the persons whose names are subscribed to the foregoing instrument, and also known to me to be citizens of said State, and each acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2nd day of December, 1952.

/s/ Vera Hall
(VERA HALL)
Notary Public,
Tarrant County, Texas

[NOTARY SEAL]

THE ATTORNEY GENERAL
OF TEXAS

Austin 11, Texas

Austin, April 13, 1956

CERTIFICATE

I hereby certify that the attached amendment to the Articles of Incorporation of American Savings Life Insurance Company, which was approved by order of the Board of Insurance Commissioners dated April 5, 1956, were submitted to me on the 13th day of April, 1956 and, having examined them as to form only, I find them to be in conformity with the law of this State in that regard.

/s/ John Ben Shepperd
Attorney General

[SEAL]

[Filed in the Department of Insurance of the State of Texas this 16th day of April 1956, Commissioner of LIFE INSURANCE. By L. Wilson]

STATE OF TEXAS
COUNTY OF HARRIS

KNOW ALL MEN
BY THESE PRESENTS

THAT, WHEREAS, at a meeting of the stockholders of the American Savings Life Insurance Company held at 3103 South Main in Houston, Texas, on February 28, 1956, in conformity with the By-Laws thereof, a majority of the stockholders of said Corporation voted to change the location of the home office of said Corporation from

Fort Worth, Tarrant County, Texas, to Houston, Harris County, Texas;

NOW, THEREFORE, we, Dr. R. O. Brennan, Robert C. McKay, Dr. V. L. Jennings, A. N. M. Cravens, and Marshall McDonald, being a majority of the Board of Directors of said Corporation, in compliance with the action of the stockholders aforesaid, do hereby amend the original Articles of Incorporation of said Corporation so as to change the home office of said Corporation from Fort Worth, Tarrant County, Texas, to Houston, Harris County, Texas, so that Article 3 of said Articles of Incorporation shall hereafter read as follows:

The location of the home office of said Corporation is Houston, Harris County, Texas, and we hereby certify such action to the Board of Insurance Commissioners of the State of Texas.

IN TESTIMONY WHEREOF we here unto subscribe our names this 13th day of March, 1956.

/s/ Dr. R. O. Brennan
DR. R. O. BRENNAN

/s/ Robert C. McKay
ROBERT C. MCKAY

/s/ Dr. V. L. Jennings
DR. V. L. JENNINGS

/s/ A. N. M. Cravens
A. N. M. CRAVENS

/s/ Marshall McDonald
MARSHALL MCDONALD

Directors of American
Savings Life Insurance
Company

STATE OF TEXAS
COUNTY OF HARRIS

Before me, a Notary Public in and for said county and state, on this day personally appeared DR. R. O. BRENNAN known to me to be the same DR. R. O. BRENNAN whose name is subscribed to the foregoing instrument and to be a Director of American Savings Life Insurance Company, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13th day of March, 1956.

/s/ Alleen Hathorn
Notary Public

[NOTARY SEAL]

STATE OF TEXAS
COUNTY OF HARRIS

Before me, a Notary Public in and for said county and state, on this day personally appeared ROBERT C. McKAY known to me to be the same ROBERT C. McKAY whose name is subscribed to the foregoing instrument and to be a Director of American Savings Life Insurance Company, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15th day of March, 1956.

/s/ Alleen Hathorn
Notary Public

[NOTARY SEAL]

STATE OF TEXAS
COUNTY OF TARRANT

Before me, a Notary Public in and for said county and state, on this day personally appeared DR. V. L. JENNINGS known to me to be the same DR. V. L. JENNINGS whose name is subscribed to the foregoing instrument and to be a Director of American Savings Life Insurance Company, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14 day of March, 1956.

/s/ Martha Shaw
Notary Public

[NOTARY SEAL]

STATE OF TEXAS
COUNTY OF HARRIS

Before me, a Notary Public in and for said county and state, on this day personally appeared A. N. M. CRAVENS known to me to be the same A. N. M. CRAVENS whose name is subscribed to the foregoing instrument and to be a Director of American Savings Life Insurance Company, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15th day of March, 1956.

/s/ Alleen Hathorn
Notary Public

[NOTARY SEAL]

Articles of Incorporation

STATE OF TEXAS
COUNTY OF HARRIS

Before me, a Notary Public in and for said county and state, on this day personally appeared MARSHALL McDONALD known to me to be the same MARSHALL McDONALD whose name is subscribed to the foregoing instrument and to be a Director of American Savings Life Insurance Company, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13th day of March, 1956.

/s/ Alleen Hathorn
Notary Public

[NOTARY SEAL]

Articles of Incorporation

Minute No.
56 366

OFFICIAL MINUTE

of Meeting

BOARD OF INSURANCE COMMISSIONERS
AUSTIN, TEXAS

Date April 5, 1956

Members present: Voted

J. Byron Saunders
Life Insurance Commissioner, Chairman
Mark Wentz
Fire Insurance Commissioner
Morris Brownlee
Casualty Insurance Commissioner

Subject Considered:

Charter Amendment
AMERICAN SAVINGS LIFE INSURANCE COMPANY
Houston, Texas

General remarks and action taken:

On this date the Board of Insurance Commissioners considered the application of American Savings Life Insurance Company to amend its charter to change its principal place of business from Fort Worth, Tarrant County, Texas, to Houston, Harris County, Texas.

Article 3.05, Texas Insurance Code, does not require a public hearing on such charter amendment. Therefore,

the Board enters this as its order of approval and acceptance of such charter amendment.

/s/ J. Byron Saunders
J. BYRON SAUNDERS
Chairman

/s/ Mark Wentz
MARK WENTZ
Commissioner

/s/ Morris Brownlee
MORRIS BROWNLEE
Commissioner

THE ATTORNEY GENERAL
OF TEXAS

Austin 11, Texas

Austin, May 8, 1956

CERTIFICATE

I hereby certify that the attached amendment to the Articles of Incorporation of American Savings Life Insurance Company, which was approved by order of the Board of Insurance Commissioners dated April 27, 1956, were submitted to me on the 8th day of May, 1956 and, having examined them as to form only, I find them to be in conformity with the law of this State in that regard.

/s/ John B. Shepperd
Attorney General

[Filed in the Department of Insurance of the State of Texas This 9th Day of May 1956, Commissioner of LIFE INSURANCE By L. Wilson.]

[SEAL]

STATE OF TEXAS)
COUNTY OF HARRIS)

KNOW ALL MEN
BY THESE PRESENTS

THAT, WHEREAS, at a meeting of the stockholders of the American Savings Life Insurance Company held at 3103 South Main in Houston, Texas, on March 13, 1956, in conformity with the By-Laws thereof, a majority of the stockholders of said Corporation voted to change the capital stock of said Corporation to 25,000 shares of the par value of One ($1.00) Dollar each:

NOW, THEREFORE, we, Dr. R. O. Brennan, Robert C. McKay, Dr. V. L. Jennings, A. N. M. Cravens, and Marshall McDonald, being a majority of the Board of Directors of said Corporation in compliance with the action of the stockholders aforesaid, do hereby amend the original Articles of Incorporation of said Corporation so as to change the capital stock of said Corporation to 25,000 shares of the par value of One ($1.00) Dollar each, so that Article 6 of said Articles of Incorporation shall hereafter read as follows:

> "The amount of said capital stock is divided into twenty-five thousand (25,000) shares of the par value of One ($1.00) Dollar each",

and we hereby certify such action to the Board of Insurance Commissioners of the State of Texas.

IN TESTIMONY WHEREOF we here unto subscribe our names this 23rd day of March, 1956.

/s/ Dr. R. O. Brennan
DR. R. O. BRENNAN

/s/ Robert C. McKay
ROBERT C. MCKAY

/s/ Dr. V. L. Jennings
DR. V. L. JENNINGS

/s/ A. N. M. Cravens
A. N. M. CRAVENS

/s/ Marshall McDonald
MARSHALL MCDONALD

Directors of American Savings Life Insurance Company

STATE OF TEXAS
COUNTY OF HARRIS

Before me, a Notary Public in and for said county and state, on this day personally appeared DR. R. O. BRENNAN known to me to be the same DR. R. O. BRENNAN whose name is subscribed to the foregoing instrument and to be a Director of American Savings Life Insurance Company, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 26th day of March, 1956.

/s/ Alleen Hathorn
Notary Public

[NOTARY SEAL]

STATE OF TEXAS
COUNTY OF HARRIS

Before me, a Notary Public in and for said county and state, on this day personally appeared ROBERT C. McKAY known to me to be the same ROBERT C. McKAY whose name is subscribed to the foregoing instrument and to be a Director of American Savings Life Insurance Company, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 16th day of March, 1956.

/s/ Alleen Hathorn
Notary Public

[NOTARY SEAL]

STATE OF TEXAS
COUNTY OF TARRANT

Before me, a Notary Public in and for said county and state, on this day personally appeared DR. V. L. JENNINGS known to me to be the same DR. V. L. JENNINGS whose name is subscribed to the foregoing instrument and to be a Director of American Savings Life Insurance Company, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 24th day of March, 1956.

/s/ O. W. White
Notary Public

[NOTARY SEAL]

STATE OF TEXAS
COUNTY OF HARRIS

Before me, a Notary Public in and for said county and state, on this day personally appeared A. N. M. CRAVENS known to me to be the same A. N. M. CRAVENS whose name is subscribed to the foregoing instrument and to be a Director of American Savings Life Insurance Company, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 26th day of March, 1956.

/s/ Alleen Hathorn
Notary Public

[NOTARY SEAL]

STATE OF TEXAS
COUNTY OF HARRIS

Before me, a Notary Public in and for said county and state, on this day personally appeared MARSHALL McDONALD known to me to be the same MARSHALL McDONALD whose name is subscribed to the foregoing instrument and to be a Director of American Savings Life Insurance Company, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 23rd day of March, 1956.

/s/ Alleen Hathorn
Notary Public

[NOTARY SEAL]

Minute No.
56 476

OFFICIAL MINUTE

of Meeting

BOARD OF INSURANCE COMMISSIONERS
AUSTIN, TEXAS

Date April 27, 1956

Members present: Voted

J. Byron Saunders
Life Insurance Commissioner, Chairman
Mark Wentz
Fire Insurance Commissioner
Morris Brownlee
Casualty Insurance Commissioner

Subject Considered:

Charter Amendment
AMERICAN SAVINGS LIFE INSURANCE COMPANY
Houston, Texas

General remarks and action taken:

On this date, the Board of Insurance Commissioners considered the amendment to charter of American Savings Life Insurance Company to increase their shares of capital stock outstanding to 25,000 at a par value of $1.00 each.

The applicable statutes do not require public hearing on this matter. Therefore, the Board enters this as its order of approval on such charter amendment.

It is further directed that this charter amendment now be referred to the Attorney General for his approval as required by Article 2.03, Section 5, Texas Insurance Code.

/s/ J. Byron Saunders
J. BYRON SAUNDERS
Chairman

/s/ Mark Wentz
MARK WENTZ
Commissioner

/s/ Morris Brownlee
MORRIS BROWNLEE
Commissioner

THE ATTORNEY GENERAL OF TEXAS

Austin 11, Texas

Will Wilson
Attorney General

Austin, November 23, 1960

CERTIFICATE

I hereby certify that the attached Charter Amendment to Articles of Incorporation of American Savings Life Insurance Company, together with all supporting documents, which were heretofore approved by the order of the Commissioner of Insurance dated November 21, 1960, were submitted on the 22nd day of November 1960 and, being examined only as to formal compliance with the Constitution and laws of the State of Texas and not as to solvency or financial condition, is in this respect in conformity with the law of Texas.

/s/ Will Wilson
WILL WILSON
Attorney General

[SEAL]

[Filed with State Board of Insurance of the State of Texas this 1st Day of December 1960, Commissioner of Insurance, By /s/ B. Brown]

ARTICLES OF AMENDMENT
to the
ARTICLES OF INCORPORATION

Pursuant to the provisions of Article 4.04 of the Texas Business Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation, which changes the name of the

corporation, changes the home office of the corporation, and changes the maximum number of Directors of the corporation.

I.

The name of the corporation is American Savings Life Insurance Company.

II.

The following amendments to the Articles of Incorporation were adopted by the shareholders of the corporation on the 4th day of October, 1960:

Article I of the original or amended Articles of Incorporation is hereby amended to read as follows:

> The name of the corporation shall be GROUP LIFE AND HEALTH INSURANCE COMPANY.

Article III of the original or amended Articles of Incorporation is hereby amended to read as follows:

> The location of the home office of said corporation is Dallas, Dallas County, Texas.

Article VIII of the original or amended Articles of Incorporation is hereby amended to read as follows:

> The number of directors shall be not less than five (5) or more than twenty-seven (27).

III.

The number of shares of the corporation outstanding at the time of such adoption was twenty-five thousand (25,000); and the number of shares entitled to vote thereon was twenty-five thousand (25,000).

IV.

The number of shares voted for such amendments were twenty-five thousand (25,000); and the number of shares voted against such amendments were none (0).

DATED this 20th day of October, 1960.

American Savings Life
Insurance Company

By: /s/ L. H. Allen
L. H. ALLEN
Its President

and

By: /s/ W. R. McBee
W. R. MCBEE
Its Secretary

STATE OF TEXAS :
:
COUNTY OF HARRIS :

I, D. M. Johnston, a Notary Public, do hereby certify that on this 20th day of October, 1960, personally appeared before me, L. H. Allen, who declared he is President of the corporation executing the foregoing document, and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

/s/ D. M. Johnston
Notary Public in and for
Harris County, Texas

STATE OF TEXAS :
:
COUNTY OF DALLAS :

I, Judy Johnson, a Notary Public, do hereby certify that on this [Illegible] day of October, 1960, personally appeared before me, W. R. McBee, who declared he is Secretary of the corporation executing the foregoing document, and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

/s/ Judy Johnson
Notary Public in and for
Dallas County, Texas

No. [Illegible]

OFFICIAL ORDER

of the

COMMISSIONER OF INSURANCE

of the

STATE OF TEXAS
AUSTIN, TEXAS

Date Nov. 21, 1960

Subject Considered:

AMERICAN SAVINGS
LIFE INSURANCE COMPANY
Houston, Texas

CHARTER AMENDMENT

General remarks and official action taken:

On this day, came on for consideration by the Commissioner of Insurance, the application for approval of a charter amendment by AMERICAN SAVINGS LIFE INSURANCE COMPANY, Houston, Texas, changing the name of the Company from AMERICAN SAVINGS LIFE INSURANCE COMPANY to GROUP LIFE AND HEALTH INSURANCE COMPANY, changing the home office of the Company from Houston, Harris County, Texas, to Dallas, Dallas County, Texas, and changing the number of directors of the Company to be not less than five (5) nor more than twenty-seven (27).

A public hearing was deemed necessary by the Commissioner of Insurance on the charter amendment, and due and proper notice was given to the Company, and the Company has furnished a publisher's affidavit that the notice of the hearing was published in a newspaper of general circulation in the county of the home office of the Company, and that such notice was published at least ten (10) days prior to such hearing.

On November 17, 1960, a public hearing was held before Joe B. Roberts, Hearing Officer for the State Board of Insurance, at 10:00 A.M. in the Hearing Room of the State Board of Insurance, 815 Brazos Street, Austin, Texas, concerning the proposed charter amendment, and the Company appeared by and through Mr. Phillip R. Overton, Attorney, and offered evidence and testimony in support of the amendment.

Action of the Company stockholders, as required and permitted by Article 3.05 of the Texas Insurance Code and Article 4.02 and 4.04 of the Texas Business Corporation Act, has been evidenced to the Commissioner, and the amendment is properly supported by other required documents and papers.

Based upon the evidence presented to him and the findings and recommendations of the Hearing Officer, the Commissioner finds: (1) the minimum capital and surplus, as required by law, is the bona fide property of the Company; (2) the officers, directors and managing executives have sufficient insurance experience, ability and standing to render success of the Company probable; (3) the Company is acting in good faith. THEREFORE, the Commissioner of Insurance hereby enters this as his ORDER OF APPROVAL of such charter amendment.

It is further directed that, as required by Articles 3.04 and 3.05, Texas Insurance Code, the charter

amendment now be transferred to the Attorney General of the State of Texas for his approval.

/s/ William A. Harrison
WILLIAM A. HARRISON
Commissioner of Insurance

Prepared by:

/s/ Clay Cotten
CLAY COTTEN
Legal Counsel

THE ATTORNEY GENERAL OF TEXAS

Austin 11, Texas

Waggoner Carr
Attorney General

Austin, January 28, 1965

CERTIFICATE

I hereby certify that the attached Charter Amendment to Articles of Incorporation of Group Life and Health Insurance Company, together with all supporting documents, which were heretofore approved by the order of the Commissioner of Insurance, dated January 25, 1965, were submitted on the 25th day of January 1965 and, being examined only as to formal compliance with the Constitution and laws of the State of Texas and not as to solvency or financial condition, is in this respect in conformity with the law of Texas.

/s/ Waggoner Carr
WAGGONER CARR
Attorney General

[SEAL]

[Filed with State Board of Insurance of the State of Texas This 29th Day of January 1965, Commissioner of Insurance, By /s/ [Illegible]]

ARTICLES OF AMENDMENT

to the

ARTICLES OF INCORPORATION

Pursuant to the provisions of Article 4.04 of the Texas Business Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles

of Incorporation, correcting an error made in a previous amendment to the Articles of Incorporation, correcting a conflict that exists between Articles 5 and 7, increasing the amount of capital stock and the number of authorized shares of the corporation, and deleting the description of the corporation as a "limited capital stock company."

I

The name of the corporation is Group Life & Health Insurance Company.

II

The following amendments to the Articles of Incorporation were adopted by the Shareholders of the corporation on September 26, 1964:

An amendment, dated March 13, 1956, purporting to change the capital stock of the Company erroneously designated Article 6 rather than Article 5. This error is hereby corrected.

Article 7 of the Articles of Incorporation is hereby amended by deleting therefrom the following:

"The amount of said capital stock is divided into twenty five hundred (2500) shares, of the par value of TEN ($10.00) DOLLARS each, and the amount subscribed and paid by each of the incorporators is as follows:"

Article 5 of the Articles of Incorporation, as corrected above, is hereby amended to read as follows:

The capital stock of the Company shall be two hundred fifty thousand dollars ($250,000.00), divided into two hundred fifty thousand (250,000) shares of the par value of one dollar ($1.00) each.

Article 4 of the Articles of Incorporation is hereby amended to read as follows:

The kind or kinds of insurance business said corporation proposes to transact is that of a life, health and accident insurance company, engaging generally in the business of life, health and accident insurance pursuant to Chapter 3 of the Texas Insurance Code.

III

The number of shares of the corporation outstanding at the time of such adoption was twenty-five thousand (25,000); and the number of shares entitled to vote thereon was twenty-five thousand (25,000).

IV

The number of shares voted for such amendment was twenty-four thousand nine hundred ninety-six (24,996); and the number of shares voted against such amendment was none (0).

V

The manner in which such amendment effects a change in the amount of stated capital, and the amount of stated capital as changed by such amendment are as follows:

The capital is increased from $25,000.00 to $250,000.00.

Dated December 14, 1964.

GROUP LIFE & HEALTH
INSURANCE COMPANY

By: /s/ E. A. Rowley
E. A. ROWLEY
Its President

By: /s/ Everett C. Fox
EVERETT C. FOX
Its Secretary

Articles of Incorporation

STATE OF TEXAS)
)
COUNTY OF POTTER)

I, Dorothy Gillette, a Notary Public, do hereby certify that on this 14th day of December, 1964, personally appeared before me E. A. Rowley, President of the corporation executing the foregoing document and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

/s/ Dorothy Gillette
Notary Public in and for
Potter County, Texas

My commission expires: June 1965

STATE OF TEXAS)
)
COUNTY OF DALLAS)

I, [——Illegible——], a Notary Public, do hereby certify that on this 21st day of December, 1964, personally appeared before me Everett C. Fox, Secretary of the corporation executing the foregoing document, and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

/s/ [Illegible]
Notary Public in and for
Dallas County, Texas

My commission expires: June 1965

Articles of Incorporation

No. 17823

OFFICIAL ORDER

of the

COMMISSIONER OF INSURANCE

of the

STATE OF TEXAS
AUSTIN, TEXAS

Date Jan. 25, 1965

Subject Considered:

GROUP LIFE AND HEALTH
INSURANCE COMPANY

Dallas, Texas

CHARTER AMENDMENT

General remarks and official action taken:

On this day, came on for consideration by the Commissioner of Insurance, an amendment to the charter of GROUP LIFE AND HEALTH INSURANCE COMPANY, Dallas, Texas, increasing its capital from TWENTY-FIVE THOUSAND DOLLARS ($25,000) divided into Twenty-five Thousand (25,000) shares of stock of the par value of ONE DOLLAR ($1.00) per share to TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000) divided into Two Hundred Fifty Thousand (250,000) shares of stock of the par value of ONE DOLLAR ($1.00) per share, by declaring a nine-for-one (9 for 1) stock dividend and transferring TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS ($225,000) from [illegible] to capital; correcting an error made in a previous amendment; correcting a conflict between Ar-

ticles 5 and 7; and deleting the description of the compeny as a "limited capital stock company."

A public hearing was deemed necessary by the Commissioner of Insurance on the charter amendment, and due and proper notice was given to the company, and the company has furnished a publisher's affidavit that the notice of the hearing was published at least ten (10) days prior to the hearing in a newspaper of general circulation in the county of the home office of the company.

On January 22, 1965, a public hearing was held before Joe B. Roberts, Hearing Officer for the State Board of Insurance, in the offices of the State Board of Insurance, 1110 San Jacinto, Austin, Texas, concerning the proposed charter amendment, at which hearing representatives of the company appeared and offered evidence and testimony in support of the amendment.

Action of the Board of Directors and the stockholders of the company, as required and permitted by Article 3.05 of the Texas Insurance Code and Articles 4.02 and 4.04 of the Texas Business Corporation Act, has been evidenced to the Commissioner of Insurance, and the amendment is properly supported by other required documents and papers.

Based upon the evidence and testimony presented at the hearing and the findings and recommendations of the Hearing Officer, the Commissioner finds: (1) the minimum capital and surplus, as required by law, is the bona fide property of the company; (2) the officers, directors and managing executives have sufficient insurance experience, ability and standing to render success of the company probable; (3) the company is acting in good faith. THEREFORE, the Commissioner of Insurance hereby enters this as his ORDER OF APPROVAL of such charter amendment.

It is further ordered that, as required by Articles 3.04 and 3.05, Texas Insurance Code, the charter amendment now be referred to the Attorney General of this State for his approval.

/s/ J. N. Nutt
J. N. NUTT
Commissioner of Insurance

Prepared by:

/s/ P. Frank Lake
P. FRANK LAKE
Legal Counsel

Articles of Incorporation

THE ATTORNEY GENERAL OF TEXAS

Austin, Texas 78711

John L. Hill
Attorney General

Austin, January 3, 1974

CERTIFICATE

I hereby certify that the attached Charter Amendment to Articles of Incorporation of Group Life & Health Insurance Company, together with all supporting documents, which were heretofore approved by the Order of the Commissioner of Insurance, dated December 14, 1973, were submitted on the 18th day of December, 1973 and, being examined only as to formal compliance with the Constitution and laws of the State of Texas and not as to solvency or financial condition, is in this respect in conformity with the law of Texas.

/s/ John L. Hill
JOHN L. HILL
Attorney General

[SEAL]

[Filed with State Board of Insurance of the State of Texas This 14th Day of January 1974, Commissioner of Insurance, By SR]

Articles of Incorporation

ARTICLES OF AMENDMENT

to the

ARTICLES OF INCORPORATION

Pursuant to the provisions of Article 3.05 and Article 3.04 of the Insurance Code of the State of Texas, the undersigned Corporation adopts the following Articles of Amendment to its Articles of Incorporation, increasing the amount of capital stock and the number of authorized shares of the Corporation.

I

The name of the Corporation is Group Life & Insurance Company.

II

The following amendments to the Articles of Incorporation were adopted by the Shareholders of the Corporation on September 29, 1973:

"Article 5 of the Articles of Incorporation, as amended, is hereby amended to read as follows:

The capital stock of the Company shall be one million dollars ($1,000,000.00), divided into one million (1,000,000) shares of the par value of one dollar ($1.00) each."

III

The number of shares of the Corporation outstanding at the time of such adoption was two hundred fifty thou-

[Filed with State Board of Insurance of the State of Texas This 14th Day of January 1974, Commissioner of Insurance, By SR]

sand (250,000); and the number of shares entitled to vote thereon was two hundred fifty thousand (250,000).

IV

The number of shares voted for such amendment was two hundred forty nine thousand eight hundred eighty three (249,883); and the number of shares voted against such amendment was none (0).

V

The manner in which such amendment effects a change in the amount of stated capital, and the amount of stated capital as changed by such amendment are as follows:

The capital is increased from $250,000.00 to $1,000,-000.00.

Dated December 4, 1973.

GROUP LIFE & HEALTH
INSURANCE COMPANY

By: /s/ Tom L. Beauchamp, Jr.
TOM L. BEAUCHAMP, JR.
Its President

By: /s/ Boone Powell
BOONE POWELL
Its Secretary

STATE OF TEXAS)
)
COUNTY OF DALLAS)

I, Linda Jean Arnold, a Notary Public, do hereby certify that on this 4th day of December, 1973, personally appeared before me Tom L. Beachamp, Jr., President of

the corporation executing the foregoing document and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

/s/ Linda Jean Arnold
Notary Public in and for
Dallas County, Texas

My commission expires: June 1, 1975

STATE OF TEXAS)
)
COUNTY OF DALLAS)

I, Linda Jean Arnold, a Notary Public, do hereby certify that on this 4th day of December, 1973 personally appeared before me Boone Powell, Secretary of the corporation executing the foregoing document, and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

/s/ Linda Jean Arnold
Notary Public in and for
Dallas County, Texas

My commission expires: June 1, 1975

Articles of Incorporation

No. 42297

OFFICIAL ORDER

of the

COMMISSIONER OF INSURANCE

of the

STATE OF TEXAS
AUSTIN, TEXAS

Date Dec. 14, 1973

Subject Considered:

GROUP LIFE & HEALTH INSURANCE COMPANY
Dallas, Texas

CHARTER AMENDMENT

General remarks and official action taken:

On this day, came on for consideration by the Commissioner of Insurance, an amendment to the charter of GROUP LIFE & HEALTH INSURANCE COMPANY, Dallas, Texas, increasing its capital from TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000) divided into Two Hundred Fifty Thousand (250,000) shares of stock with a par value of ONE DOLLAR ($1.00) per share to ONE MILLION DOLLARS ($1,000,000) divided into One Million (1,000,000) shares with a par value of ONE DOLLAR ($1.00) per share by transfer of SEVEN HUNDRED FIFTY THOUSAND DOLLARS ($750,000) from earned surplus to capital and declaring a stock dividend.

Since the amendment involves only a stock dividend by means of a lawful transfer from surplus to capital, a hearing was not deemed by the Commissioner to be necessary.

Articles of Incorporation

Action of the Board of Directors and the stockholders of the company, as required and permitted by Article 3.05 of the Texas Insurance Code and Articles 4.02 and 4.04 of the Texas Business Corporation Act, has been evidenced to the Commissioner of Insurance and the amendment is properly supported by other required documents and papers.

Based upon the evidence presented to him, the Commissioner of Insurance hereby enters this as his ORDER OF APPROVAL of such charter amendment.

It is further directed that, as required by Articles 3.04 and 3.05 of the Texas Insurance Code, the charter amendment now be referred to the Attorney General of the State of Texas for his approval.

/s/ Clay Cotten
CLAY COTTEN
Commissioner of Insurance

by /s/ Don B. Odum
DON B. ODUM
Deputy Commissioner

Prepared by:

/s/ Jeff W. Autrey
JEFF W. AUTREY
Attorney

CERTIFICATE OF AUTHORITY NO. 2246 ISSUED TO GROUP LIFE AND HEALTH INSURANCE COMPANY, DATED DECEMBER 15, 1960 ("EXHIBIT 65" TO DEPOSITION OF DONALD H. BUNNELL, DECEMBER 30, 1975)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

Certificate of Authority

Form A-119

STATE BOARD OF INSURANCE
STATE OF TEXAS

Nº 14124

IT IS HEREBY CERTIFIED That the instrument which is hereunto attached is a true, full and correct copy of

Certificate of Authority No. 2246 dated December 15, 1960, issued to GROUP LIFE AND HEALTH INSURANCE COMPANY, Dallas, Texas, consisting of one (1) page;

now on file in and forming a part of the records of the State Board of Insurance.
IN WITNESS WHEREOF, I hereunto subscribe my name and affix the Seal of the State Board of Insurance, in the City of Austin, State of Texas, this

10th day of December, 1975

JOSEPH D. HAWKINS
COMMISSIONER OF INSURANCE

By Patricia L. Gustafson
Patricia L. Gustafson
Assistant Manager
Company License Section

Certificate of Authority

STATE OF TEXAS
STATE BOARD OF INSURANCE

Certificate No. 2246 Company No. 01-36770

CERTIFICATE OF AUTHORITY

THIS IS TO CERTIFY THAT

GROUP LIFE AND HEALTH INSURANCE COMPANY
DALLAS, TEXAS

has complied with the laws of the State of Texas applicable thereto and is hereby authorized to transact the business of

Life; Health and Accident

insurance within the State of Texas. This Certificate of Authority shall be in full force and effect until it is revoked, canceled or suspended according to law.

IN TESTIMONY WHEREOF, witness my hand and seal of office at Austin, Texas, this 15th day of December, A. D. 1960.

Edwin A. Harrison
COMMISSIONER OF INSURANCE

TEXAS ATTORNEY GENERAL OPINION NO. WW-1475, DATED DECEMBER 11, 1975 ("APPENDIX I" TO BRIEF OF APPELLEE GROUP LIFE AND HEALTH INSURANCE COMPANY, SEPTEMBER 24, 1976)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPENDIX I

THE ATTORNEY GENERAL OF TEXAS
AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL
STATE OF TEXAS
COUNTY OF TRAVIS

I, John L. Hill, Attorney General of Texas, hereby certify that the attached is a true and correct copy of the opinion numbered W W 1475 dated December 11, 1962 written to Mr. William A. Harrison, by Dudley D. McCalla, Assistant, as it appears in the records of this office.

Given under my hand and seal of office this 2nd day of January, 1976.

/s/ John L. Hill
Attorney General

THE ATTORNEY GENERAL OF TEXAS
AUSTIN 11, TEXAS

December 11, 1962

Will Wilson
Attorney General

[This Opinion Affirms Opinion #O-4986-A]

Mr. William A. Harrison
Commissioner of Insurance
International Life Building
Austin 14, Texas

Opinion No. WW-1475

Re: Whether, under the facts stated, Prepaid Prescription Plan, Inc. would be engaging in the business of insurance in furnishing the prescription service required by its service agreements and pharmacy contracts, and related questions.

Dear Mr. Harrison:

You have asked our opinion as to whether or not the business proposed to be conducted by Prepaid Prescription Plan, Inc., is an insurance business. In this connection you point to Attorney General's Opinion No. O-4986-A dealing with a somewhat similar problem and ask whether or not it is still in effect and, if so, whether or not it is correct.

In your request you outline the facts to be considered as follows:

"The Prepaid Prescription Plan, Inc., is a domestic corporation chartered August 4, 1959, under the Texas Business Corporation Act. The Purpose Clause of its Articles of Incorporation provides as follows:

'ARTICLE THREE: The purposes for which the corporation is organized are:

To establish, maintain and operate a prepaid prescription plan or plans whereby prescriptions, either oral or written by duly licensed physicians, may be dispensed by duly licensed pharmacists to individuals, either singly or in groups, who become subscribers thereto:

And in furtherance thereof to enter into contracts with duly licensed pharmacists who are authorized to dispense prescriptions in compliance with the laws of the state in which they do business, whereby such pharmacists agree to provide such prescription service to its subscribers.'

"Membership for a subscriber and/or his dependents is available on a group plan or a pay direct plan upon making application for enrollment on an application form furnished by the company, payment of service fees, and upon acceptance of such application by the company and the issuance of Service Agreement. Membership for a pharmacy in the plan may be obtained by submitting application on a form furnished by the company, payment of membership fee, and execution of Pharmacy Contract. Copies of both type applications and a copy of the Service Agreement and Pharmacy Contract are enclosed herewith for your information as to the exact terms of these instruments.

"The Prepaid Prescription Plan, Inc., is a stock company with the stockholders being the owners of the corporation and entitled to receive profits upon their investment in the stock.

"For and in the consideration of the payment of the monthly service fee provided for in the Service

Agreement a subscriber, after obtaining a legal prescription from a licensed physician, may have the prescription filled by any Member Pharmacy and pay one-third or one-half of the prescription selling price according to the Service Agreement. Prescriptions may be obtained from other than a Member Pharmacy only under certain conditions as set out in the Service Agreement after securing approval of the pharmaceutical director of the company. The company pays directly to the Member Pharmacy the two-thirds or one-half the price of the prescription, as the case may be, which is computed and based upon a schedule of prices as provided for in the Pharmacy Contract. The "prescription selling price" upon which the subscriber's one-third or one-half is computed may be different from the price upon which the company's two-thirds or one-half is computed.

> "The Prepaid Prescription Plan, Inc., acts as an agent for the subscriber and for the member pharmacist but specifically assumes no liability for the performance of the Member Pharmacy."

Insurance has been defined in *Ware* v. *Heath*, 237 S.W.2d 362, (Civ. App. 1951), as: "An undertaking by one party to protect the other party from loss arising from named risks, for the consideration and upon the terms and under the conditions recited" citing Couch's Cyclopedia of Insurance Law, Vol. I, page 2. As stated in *National Auto Service Corporation* v. *State*, 55 S.W.2d 209, (Civ. App. 1932, error dism.): "Whether or not a contract is one of insurance is to be determined by its purpose, effect, contents, and import, and not necessarily by the terminology used, and even though it contain declarations to the contrary. . ." We have concluded that under the facts presented Prepaid Prescription Plan, Inc., hereinafter referred to as the corporation, will be conducting an insurance business.

Examining the contracts furnished us in connection with the opinion request, it can be seen that the benefit to the holder of the service agreement is the obtaining of prescription drugs at a reduced rate, the difference between the amount paid by the subscriber to the pharmacy and the actual sale price being paid to the pharmacist by the corporation.[1] The risk insured against is the possibility that the subscriber's doctor, during the period covered by the service agreement, might see fit to prescribe drugs for his treatment, the filing of which prescriptions would entail an expenditure by the subscriber. In the event of serious illness to the subscriber, he conceivably could be financially unable to purchase the necessary drugs at the current market price. After entering into the service agreement in question, a portion of this risk is distributed to the corporation, for it has agreed (by virtue of the contract between it and the subscriber and between it and the member pharmacy) in consideration of the monthly payment of $1.50 or $1.60 (depending on whether or not a group or an individual is a contracting party) to reimburse a member pharmacy a portion of the price of each prescription filled by the pharmacy for the subscriber. The contingency upon which the payment rests is the filling by the pharmacy of a prescription written by a doctor and submitted to the pharmacy by a subscriber to the Plan. It will be noted that the pharmacy takes no risk. It is completely reimbursed, partly by the subscriber and partly by the corporation—in some respects analogous to deductible hospitalization policies. On the other hand the corporation, organized for profit, is gambling that its cost for prescriptions filled for its subscribers will be less than the amount taken in through the monthly payments.

---

[1] As pointed out in your opinion request, the prescription selling price upon which the subscriber's payment is computed may be different from the price upon which the corporation's payment is computed. This, however, is not material to the question presented.

We can find no cases in this or other jurisdictions passing upon arrangements exactly the same as that herein involved. It resembles in some respects and is presumably based upon medical plans previously passed upon by the courts of certain other jurisdictions, primarily the group health or group medical plans which came into vogue during the depression. The earliest case in this general field is *State ex rel. Fishbach* v. *Universal Service Agency*, 151 Pac. 768, (Wash. Sup. 1915), which was an action by the insurance commissioner of the State of Washington to forfeit the charter of the Universal Service Agency for doing an insurance business without complying with the insurance regulations. The agency entered into contracts with a pharmacist, a doctor, a grocer, and a shoe dealer, the dealers contracting to sell their products at a fixed rate or a fixed discount and the doctor contracting to render medical service for a fixed consideration. The agency also entered into contracts with individuals for the fixed sum of $15.00 per year plus $5.00 for each child covered by the agreement. The products purchased from the dealers were paid for by the individuals purchasing same and the doctor's compensation was a fixed amount out of each membership fee and did not vary with the treatments rendered. The agency assumed no liability for breach of the contract by the doctor or the dealers. The court held that the agency was not in the insurance business because it was insuring against no peril. It can be seen that the arrangement is not the same as that passed upon in this opinion, for the agency obviously assumed no risk that the payments it was called upon to make would exceed the amount which it was taking in from the contract holders.

There are also in existence a group of opinions dealing with group medical plans which are epitomized by the opinions in *California Physicians' Service* v. *Garrison*, 172 P.2d 4, (Cal. Sup. 1946), 167 ALR 306, and *Jordan* v. *Group Health Association*, 107 F.2d 239, U. S. Court

of Appeals, (1939). In both, the formation of the particular type of corporation involved was authorized by statute, both were non-profit and both encompassed group service only. In the *Garrison* case the subscriber's dues amounted to $1.70 (male) and $2.00 (female) a month. The doctors contracted with the service to make available their medical services in return for a payment on a unit basis, i.e., a pro rata distribution *of the dues collected for the month*, depending upon the amount of service which they rendered. In the *Jordan* case, the doctors were paid a fixed annual compensation. In both cases the business was held not to be insurance in nature. As pointed out in the *Jordan* opinion, the corporation assumed no risk and acted only as an agent. If any risk was assumed it was assumed by the doctor. There was no possibility in either case that the cost to the service or group association for the services rendered by the doctors would exceed the amount taken in in monthly dues.

To the same effect is the case of *Commissioner of Banking and Insurance* v. *Community Health Service*, Court of Errors, New Jersey, 30 A.2d 44 (1943). The stipulated facts in that case were to the effect that the defendant corporation contracted with doctors for one year periods for fixed consideration the amount of which varied with the number of individual contract holders but not with the amount of service rendered. The court held on the authority of the *Fishback* case that this was not an insurance business. Of interest to the question before us is the fact that the state contended that the amount of compensation to be paid to the doctor depended upon and would vary with the amount of services rendered regardless of the amount of dues taken in. The court clearly pointed out that it had been stipulated that the compensation was fixed and that the amount of the service rendered would not affect in any way the compensation paid by the service to the doctor. The converse of that situation, of course, is the one with which we are dealing.

Even in the group health field, however, some jurisdictions have held these arrangements to constitute insurance. This is true in the case of *Cleveland Hospital Service Association* v. *Ebright*, Court of Appeals of Ohio, 45 N.E.2d 157, affirmed by the Supreme Court of Ohio, 49 N.E.2d 929 (1943), even though the particular type of corporation was specifically authorized by statute. In that case the amount to be paid to the hospital by the Service Association varied with the amount of service rendered. The opinion reads in part as follows:

> "The advantage to the subscriber, if he invokes the benefits of his contract, requires payment in money which is definitely measured by the extent of service rendered to the subscriber by the hospital to which he elects to go. It is payable upon a contingency, namely, that it is certified by his attending physician that the subscriber requires hospitalization . . . . The contract, in probability, is not to indemnify the subscriber because the hospital which he selects does not extend credit to him and, therefore, there is no primary liability on his part which would be essential to make the service association an indemnifier. The amount which is paid by the subscriber is a charge based upon an actuarial determination of the probable risk incurred in issuing the contract, although that which is provided the subscriber upon the happening of a contingency is so far as he is concerned, service, yet it is measured by a money consideration payable to the hospital because of the rendering of that service to the subscriber on behalf of the plaintiff association."

The group of cases holding that group medical service contracts do not constitute insurance have been attacked insofar as the legal soundness of their reasoning is concerned by law review articles which are, however, favorable to the concept of group health service. For example, the writer in 53 Yale L.J. 162 speaking of the *Jordan* case criticizes the failure of the court "to recognize the underlying risk—distribution function of prepayment—to insure the potential patient against the unpredictable occurrence of sickness." Likewise, in 52 Harvard Law Review 809 appears the following: "And while the distinction between contracts for services and contracts of insurance is sometimes shadowy, it seems clear, that in the case of cooperative health associations, indemnification against medical cost rather than the unique services of the physician is the principal object of the relationship."

These principles seem even more applicable to a corporation for profit of the type with which we are here concerned. We, therefore, conclude that the plan of operation intended to be followed by Prepaid Prescription Plan, Inc., would involve the doing of an insurance business in this state.

This opinion conflicts in no way with the holding in Opinion No. O-4986-A. The facts which were at that time before this office and which are revealed in the opinion itself, show that the health service was of the cooperative type, squarely within the holding of the *Jordan* case above cited. We, therefore, affirm the holding of that opinion.

Texas Attorney General Opinion

SUMMARY

Under the facts stated, Prepaid Prescription Plan, Inc., would be engaging in the business of insurance, in furnishing the prescription service required by its service agreements and pharmacy contracts.

Very truly yours,

WILL WILSON
Attorney General of Texas

By /s/ Dudley D. McCalla
DUDLEY D. MCCALLA
Assistant Attorney General

DDM:ms

APPROVED:

OPINION COMMITTEE:

W. V. Geppert, Chairman
Vernon O. Teofan
J. Gordon Zuber
Bob E. Shannon

REVIEWED FOR THE ATTORNEY GENERAL BY:

Leonard Passmore